

**NRC REPOSITORY SAFETY DIVISION: STAFF
PERSPECTIVE ON YUCCA LICENSE REVIEW**

HEARING
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE
ECONOMY
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
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FRIDAY, JUNE 24, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:57 a.m., in room 2322 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Murphy, Pitts, Sullivan, Bass, Latta, Cassidy, Gardner, Barton, Green, Markey, Barrow, and Waxman (ex officio).

Staff present: Allison Busbee, Legislative Clerk; Dave McCarthy, Chief Counsel, Environment and the Economy; Chris Sarley, Policy Coordinator, Environment and the Economy; Sam Spector, Counsel, Oversight; Peter Spencer, Professional Staff Member, Oversight; Tiffany Benjamin; Democratic Investigative Counsel; Alison Cassady, Democratic Senior Professional Staff Member; Greg Dotson, Democratic Energy and Environment Staff Director; and Ali Neubauer, Democratic Investigator.

Mr. SHIMKUS. The subcommittee will now come to order, and I recognize myself for 5 minutes for the purpose of an opening statement.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Today we continue the committee's efforts to understand the decision-making process at the NRC, in particular when it comes to the closure of Yucca Mountain. Specifically we will examine the views and perspective of the non-partisan NRC staff that was responsible for conducting the safety evaluation and technical reviews of the license application for the Yucca Mountain repository and the controversial efforts to shut this review down.

This hearing will provide a public face on the professional people at NRC who have labored tirelessly, outside the public spotlight, in good faith, to carry out the Nuclear Waste Policy Act.

We will learn about the human effort that has gone into planning for and reviewing the Yucca Mountain license, an effort that represents first-of-its-kind work. This is work to ensure a repository will meet the EPA standards for 1 million years. The NRC has worked for more than 2 decades to prepare for and to conduct the license evaluation.

This important job has required dedicated staff, representing a range of scientific disciplines to do the review with objectivity and integrity so the public can trust the work. There are geochemists, hydrologists, climatologists, various engineering disciplines, health physicists, volcanologists, and inspectors. The work NRC staff has put into the Yucca Mountain license application has been by all evidence world class, and we should expect no less from the NRC. Now that very staff fears its work has been caught up in a dysfunctional agency which is threatening their ability to maintain public trust in the work they produce.

We will hear from some of the people who would ensure that, should NRC approve DOE's license application for Yucca Mountain, the repository will be safe. We should not forget how much money and human effort has gone into development of this project. To date we have spent \$15 billion, probably half a billion dollars alone by the NRC. The American rate payer and taxpayer are owed something for this effort, yet that effort risks getting swept away by the political agenda of this administration and the NRC Chairman.

It is important for this committee to gather information about what is behind the license review work in terms of staff expertise, years of commitment and integrity.

We want to learn the facts about the status of their work: Is it complete, what else needs to be done, and what kind of direction they received from the Chairman and the NRC management to shut down their work. Last week we took troubling testimony from the Inspector General about the Chairman's influence and actions to strategically work to impose his views on the Commission. Now we find this virus has infected even deeper than we imagined with manipulation by senior management of career staff's scientific findings.

These staff who worked on the program can explain exactly where they were in completing their work. They can explain what they were doing to carry out their responsibilities under the Nuclear Waste Policy Act and how the Chairman's and Commission's actions affected this activity. And they can explain what they believe it will take to resurrect the review of the Yucca Mountain application.

We can also get the facts about the current efforts to preserve the staff's decades of work on this project and whether those efforts will provide the public a full view of their analysis. This is new information we will examine today to determine whether staff continues to be restricted in providing a full and transparent report of their work to the public, which has been promised by the Chairman.

We want to understand how information flows from staff who seek policy guidance up to the Commission and how that has been handled when it comes to the Yucca Mountain license and whether they believe staff is getting the support it needs from management, the Chairman and the Commission.

Let me express my gratitude to the witnesses from the division level, Dr. Kotra, Dr. Stablein, Mr. Mohseni, and Mr. Kokajko, and their supervisor, Ms. Haney, for taking the time to appear today. It is unusual to hear directly from staff, but this Yucca Mountain

matter is unusual itself, and your testimony is very important to our investigation.

[The prepared statement of Mr. Shimkus follows:]

**Energy and the Environment Subcommittee
Opening Statement Chairman John Shimkus
NRC Staff Hearing on Yucca Mountain
June 24, 2011**

(Remarks as Prepared for Delivery)

Today we continue the committee's efforts to understand the decision making process at the NRC in particular when it comes to the closure of Yucca Mountain. Specifically we will examine the views and perspective of the non-partisan NRC staff that was responsible for conducting the safety evaluation and technical reviews of the license application for the Yucca Mountain repository – and the controversial efforts to shut this review down.

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These staff who worked on the program can explain exactly where they were in completing their work. They can explain what they were doing to carry out their responsibilities under the NWPA, and how the Chairman's and Commission's actions affected this activity. And they can explain what they believe it will take to resurrect the review of the Yucca Mountain application.

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We want to understand how information flows from staff who seek policy guidance up to the Commission, how that has been handled when it comes to the Yucca Mountain license, and whether they believe staff is getting the support it needs from management, the Chairman and the Commission.

Let me also express my gratitude to the witnesses from the division level – Dr. Kotra, Dr. Stablein, Mr. Mohseni, and Mr. Kokajko, and their supervisor, Ms. Haney, for taking the time to appear today. It is unusual to hear directly from staff, but this Yucca Mountain matter is unusual, and your testimony is very important to our investigation.

Mr. SHIMKUS. And I do appreciate your attendance. And with that I yield back my time, and I will turn now to the ranking member, Mr. Green, for 5 minutes.

**OPENING STATEMENT OF HON. GENE GREEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman. Thank you, witnesses, for your patience. I apologize for running late.

Thank you for holding the hearing. I want to thank our witnesses like our Chair did for appearing before the Committee to discuss the issue of Yucca Mountain.

As you know, I have recently toured Yucca Mountain and went on a CODEL organized by Chairman Shimkus, and I appreciate the opportunity to view the facility up close and to meet with local individuals to hear their thoughts on Yucca Mountain.

There has been a lot of discussion on this committee on the decision by the administration not to proceed with Yucca Mountain. We have had a long series of hearings related to the majority's ongoing investigation. Today we will hear from the NRC staff on their thoughts regarding Yucca Mountain, whether they feel the issue was properly handled.

I appreciate hearing from staff. I have read the testimony, and this is beginning to sound like we are airing the NRC's dirty laundry. But it seems like we do that in Congress pretty often.

On June 14, this committee held a hearing with the NRCIG on the report entitled "The NRC's Chairman's Unilateral Decision to Terminate the NRC's Review of the DOE Yucca Mountain Repository License Application." The Inspector General's report found that Chairman Jaczko had not been forthcoming with the Commissioners but that ultimately he acted within his authority as NRC Chair, none of which suggests the NRC violated the law.

The report also did not review whether or not the actual decision to close Yucca was appropriate. The report did shed some light on obviously internal issues within NRC that should be evaluated and address and which we will hear about yet again today.

I appreciate the Chair's desire to continue to hold the hearings on Yucca Mountain. As I have stated several times, the United States alone produced 806 billion kilowatt hours of nuclear power in 2008 making us the biggest producer of nuclear power in the world. No matter what decision we make on Yucca Mountain, we still have a nuclear waste disposal issue. So the 25-year-old Yucca Mountain dilemma remains, and we need to resolve the situation sooner rather than later. However, a lot of the committee and personal staff in this room should be working on coal ash legislation and negotiations right now, and the time that were spent on this Yucca Mountain hearings could have been spent on other issues before our committee.

I hope when we return from the recess we have a bipartisan coal ash bill to mark up, Mr. Chairman, in the Full Committee, and we can begin working on other issues in our jurisdiction. I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the vice chairman of the subcommittee, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman. I know we have been delayed here, and it is important we hear the witnesses. So I am going to waive my opening statement and just submit it for the record.

Mr. SHIMKUS. The gentleman yields back his time. The Chair now recognizes the ranking member of the full committee, Chairman Emeritus Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman. This is the fourth hearing this subcommittee has held on the Yucca Mountain Nuclear Waste Repository, and today's hearing will examine the concerns of some of the NRC staff about the decision to terminate the NRC's review of Yucca Mountain.

I appreciate the witnesses being here today and share in their concerns with the committee. I can understand why technical staff, who have worked for years on Yucca Mountain, are frustrated and angry that the NRC may never approve or deny the license application. I believe they care deeply about the mission of the NRC and its role as an independent agency. But what I have a hard time accepting is the assertion that the decision to cease review of the license application at NRC was somehow a unilateral decision by a rogue chairman.

The Secretary of Energy determined that Yucca Mountain is not a workable option. The Department of Energy, which would be responsible for actually building the repository and managing the waste, asked to withdraw the license application. In the fiscal year 2011 budget passed in April, to avert a government shutdown, Congress allocated no money to DOE for Yucca Mountain and just \$10 million to NRC to close down the licensing review. For fiscal year 2012, the NRC Commissioners approved a budget requesting just \$4 million in order to terminate all Yucca Mountain program activities. And OMB allocated no money to NRC for the high-level waste program for 2012.

I understand why some members believe the decision to shut down the review of Yucca Mountain was political, but from what I have seen, the key decision was DOE's. DOE decided to withdraw the license application. Once DOE made this decision, the NRC's options were limited. Continuing its review risks squandering millions of taxpayer dollars.

While I have said on several occasions that the Yucca Mountain project merits independent and objective oversight, I am also concerned that this Subcommittee's myopic focus on Yucca Mountain has diverted its attention from other pressing nuclear safety issues.

This week we learned of significant nuclear safety problems in the United States from two different sources. First, Congressmen Ed Markey and Peter Welch released a GAO report about radioactive leaks from underground pipes at the Nation's nuclear power plants. As nuclear power plants age, their underground piping tends to corrode. But the condition of many underground pipes at plants across the country is unknown. GAO noted in its report that NRC has no plans to evaluate the extent to which volunteering in-

dustry initiatives are adequate to detect leaks and corrosion in these underground pipes. As a result, GAO found that NRC has “no assurance” that these initiatives will promptly detect leaks before they pose a risk to public health and safety. We ought to be holding a hearing on that subject.

Second, an investigation by the Associated Press concluded that Federal regulators at NRC have been working closely with the nuclear power industry to keep the Nation’s aging reactors operating within safety standards by weakening those standards or not enforcing them. The AP investigation found what it called a recurring pattern. “Reactor parts or systems fall out of compliance with the rules. Studies are conducted by the industry and government, and all agree that existing standards are unnecessarily conservative. Regulations are loosened, and the reactors are back in compliance.” We ought to be investigating that issue.

The GAO report and AP investigations raise serious concerns about the safety of reactors in the United States, especially as NRC continues to consider and approve additional license extensions for the aging fleet.

But we aren’t talking about that today. We are again talking about Yucca Mountain, a program with no funding and no apparent future. I question whether this is the right priority for our Nation.

With that said, I thank the witnesses for being here today. I look forward to their testimony. I understand their concerns. I feel their pain. But if DOE puts in an application and DOE withdraws its application, it is hard to rule on that application. And then when with this funding no longer available, I don’t know what NRC, under any chairman, could do under those circumstances.

I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time. They have called one vote on the floor, so I think the way we will proceed, if it is OK with my friends in the minority, is that we will go vote, then we will come back and then we will start your testimony after we do the swearing in. And with that I will call—

Mr. PITTS. Mr. Chairman, that would be what, about 10 minutes we should be back, 10, 15 minutes?

Mr. SHIMKUS. Well, it is a 15-minute vote, so I would say we will start in 15 or 20 minutes. And I want to ask unanimous consent that anyone who has a written opening statement they want to submit for the record be allowed to do so. Without objection, so ordered. The hearing is recessed.

[Recess.]

Mr. SHIMKUS. I will call the hearing back to order, and you are at your desk but the Chair will call you, the witnesses, which is Dr. Janet P. Kotra, Senior Project Manager in the Division of High-Level Waste Repository Safety at the NRC; Dr. N. King Stablein, Branch Chief in the Division of High-Level Waste Repository Safety at the NRC; Mr. Aby Mohseni, Acting Director in the Division of High-Level Waste Repository Safety at the NRC; Mr. Lawrence Kokajko, Acting Deputy Director for the Office of Nuclear Material Safety and Safeguards at the NRC; and Ms. Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards at the NRC. Again, thank you for joining us.

As you know, the testimony that you are about to give is subject to Title 18, Section 1001, of the United States Code. When holding an investigative hearing, this Committee has the practice of taking testimony under oath. Do you have any objection to testifying under oath?

Mr. STABLEIN. No.

Mr. MOHSENI. No.

Mr. KOKAJKO. No.

Ms. KOTRA. No.

Ms. HANEY. No.

Mr. SHIMKUS. For the record, all respondents stated no. The Chair then advises you that under the rules of the House and the rules of the Committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Ms. KOTRA. No.

Mr. STABLEIN. No.

Mr. MOHSENI. No.

Mr. KOKAJKO. No.

Ms. HANEY. No.

Mr. SHIMKUS. And the Chair acknowledges that all participants stated no. In that case, if you would please rise and raise your right hand, I will swear you in.

[Witnesses sworn.]

Mr. SHIMKUS. Thank you very much, we will now go into a 5-minute summary of your statement, and we would like to start left to right with Dr. Kotra. Thank you, ma'am. I appreciate you being here. And you are recognized for 5 minutes.

TESTIMONY OF JANET P. KOTRA, SENIOR PROJECT MANAGER, DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY, NUCLEAR REGULATORY COMMISSION; NEWTON KINGMAN STABLEIN, BRANCH CHIEF, DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY, NUCLEAR REGULATORY COMMISSION; ABY MOHSENI, ACTING DIRECTOR, DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY, NUCLEAR REGULATORY COMMISSION; LAWRENCE KOKAJKO, ACTING DEPUTY DIRECTOR, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, NUCLEAR REGULATORY COMMISSION; AND CATHERINE HANEY, DIRECTOR, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, NUCLEAR REGULATORY COMMISSION

TESTIMONY OF JANET P. KOTRA

Ms. KOTRA. Good morning, Chairman Shimkus, Mr. Green and members of the Subcommittee. Thank you for inviting me to participate in your hearing today. My name is Janet Kotra. I work as a senior scientist and project manager in the Division of High-Level Waste Repository Safety at the NRC. I joined NRC more than 27 years ago as a postdoctoral fellow. I have been one of the major contributors in developing NRC's regulations for the proposed Yucca Mountain Repository. Along with my scientific and engineering colleagues, I have participated in the NRC staff's independent safety review of the license application for the proposed repository

at Yucca Mountain and in preparing portions of the NRC staff's Safety Evaluation Report which you will often hear referred to as the SER.

As leader of NRC's high-level waste public outreach team, it has also been my job to organize and conduct more than three dozen public meetings and workshops in Nevada and California to explain NRC's oversight role, regulatory process and review procedures.

Of the many hats that I have worn at NRC over the years, this is by far been one of the most personally satisfying and enriching. I spent more than 10 years on the road meeting with people of the affected units of local government and from the affected tribe near Yucca Mountain, Nevada, the Timbisha Shoshone.

I spoke with people about NRC's oversight role and review procedures. I helped individuals and local officials understand their options for participating in NRC's hearing process. I explained how the NRC staff reviews and considers public comments on proposed NRC regulations. I listened to people's concerns and learned how to be more effective as a public servant. Among the comments I heard over and over again were how will NRC make its safety decision and how can we affect NRC's decision or take part in your process, if we don't understand how your decisions are made? Over the course of those 10 years, we worked hard at becoming more transparent. We took the steps needed to make our speech clearer, our documents more available and our presentations more understandable. We assured our audiences that once the application came in, we, as independent scientists and engineers, would conduct a thorough, technically sound and fair review. We also promised that our findings in the form of an SER would be made available for all to see and evaluate for themselves. And then, those findings, along with the application and all contentions admitted by an independent hearing board, and there were almost 300 of them, would be subject to an open and impartial hearing before any decision would be made to deny or authorize construction of a repository at Yucca Mountain. I assured people over and over again that this would be the case because I believed it myself. I believed it because this is how NRC conducts business. This is how NRC's licensing process has worked when NRC decided whether or not to license reactors or other large nuclear facilities throughout our more than 35-year history. And I believed it because it is consistent with the law, consistent with NRC's regulations, and consistent with our role as an independent safety regulator as established for us by you, the Congress.

Then, as reported recently by the NRC's Inspector General, Chairman Jaczko ordered staff to postpone issuance of SER Volumes 1 and 3. Division staff and managers became concerned that the other Commissioners might not be fully aware of the policy, legal and budgetary consequences of such redirection and felt that guidance from the entire Commission was called for.

I was directed to prepare a staff memorandum for all five Commissioners to be signed by the Office Director, Ms. Haney. We hoped that given an honest assessment of the facts, fair-minded Commissioners would see the need to provide staff with clear policy direction as we struggled to honor our conflicting duties and in-

structions. We were told, however, that the memorandum should make no reference to any of the related policy issues and that I should prepare it only as a status report.

Over the coming months, using a highly irregular process, I was asked to incorporate an inordinate number of changes from senior agency managers. I was willing to comply, despite my growing reservations, so long as descriptions of the program's history and status remained reasonably accurate and consistent with my knowledge of the facts.

Only later, in September of last year did it become clear that rather than to just postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman directed that all work on the SER must stop, including Volume 3 on post-closure safety, which was already complete, and undergoing management review. Written guidance came later on October 4. The Chairman met with us in the staff's Yucca Mountain team meeting just after Columbus Day. He explained that the decision to shut down the staff's review was his alone and that the staff should move to shut down the NRC's Yucca Mountain program altogether. This, despite the fact that then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and I would have to disagree with Mr. Waxman's assertion, and no Commission decision has even today been issued on whether the application can be legally withdrawn.

As the months wore on and work on the memorandum continued, formal and informal comments from the Deputy Executive Director for Operations, the Chief Financial Officer and the General Counsel were incorporated. These comments repeatedly diluted or contradicted the language prepared by the high-level waste staff and staff of the Atomic Safety and Licensing Board Panel. Both had described the severe difficulties faced by our offices struggling to cover the costs of shutting down a complex and valuable national program and infrastructure, while at the same time supporting an ongoing hearing.

Eventually, I could no longer, in good conscience, agree with the memo I was preparing. I formally withdrew my concurrence, consistent with NRC's procedures, on February 1 of this year. I did so because senior managers insisted on changes that, to me, implied that it was the NRC staff who voluntarily, or, worse still, on its own volition, terminated NRC staff's independent review of the Yucca Mountain License application and sought to end support for a full and impartial hearing to review the application.

Gentlemen, to me, this was grossly misleading and unacceptable. My colleagues who worked tirelessly to conduct a fair, independent and technically sound safety review and to prepare the required SER, stood down from those obligations only with enormous reluctance and heavy hearts.

Let me be very clear. We did not choose to abandon our duty under the law. We were directed explicitly by Chairman Jaczko to terminate our review. Yet, on multiple occasions I was prohibited from including in the status report any statement to that effect. The memorandum made no reference to the facts surrounding the termination of the staff's safety review. Without this crucial con-

text, the reader is left with a mistaken impression that the termination and orderly shutdown of the licensing review and hearing was the staff's preferred and well-considered course of action, initiated by the technical staff. Nothing could be further from the truth.

In closing, as a member of the NRC's technical staff, I remain deeply concerned that the ground-breaking regulatory work accomplished over so many decades by my colleagues not be lost or wasted. This seminal work is documented in the draft SER volumes staff has prepared. Irrespective of what ultimately becomes of Yucca Mountain, preservation and dissemination of the results of NRC staff's review and findings are of critical importance to future decisions regarding disposition of the Nation's high-level waste and spent nuclear fuel. The public deserves access to what we learned and accomplished during our safety review. If the Blue Ribbon Commission does indeed find that deep geologic disposal is inescapable as a solution for our Nation's spent fuel and high-level radioactive wastes, the lessons that NRC's technical staff learned from reviewing and evaluating compliance of the first license application for a geologic repository in the United States must be preserved, studied and shared as the resources they truly are.

Please help us, the NRC technical staff, keep the commitments we made to the public about the openness and transparency of NRC's safety review at Yucca Mountain. I implore you to take whatever action you deem necessary to allow completion and prompt, public release of the complete, unredacted and uncensored volumes of the NRC staff's SER.

I want to thank you for your concern and attention to these important matters, and I welcome any questions you may have.

[The prepared statement of Ms. Kotra follows:]

**WRITTEN STATEMENT OF
JANET P. KOTRA,
SENIOR PROJECT MANAGER
DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY
U.S. NUCLEAR REGULATORY COMMISSION
TO THE
HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
JUNE 24, 2011**

Good morning, Chairman Shimkus, Mr. Green and members of the Committee. Thank you for inviting me to participate in your hearing today. My name is Janet Kotra. I am a senior scientist and project manager in the Division of High-level Waste Repository Safety at the U.S Nuclear Regulatory Commission (NRC). I joined NRC more than 27 years ago as a postdoctoral fellow with the NRC's Advisory Committee on Reactor Safeguards. Subsequently, it was my privilege to serve as a technical assistant for two prior Commissioners, one Republican, and one Democrat. Since 1993, I have worked in High-level Waste Repository Safety with NRC's technical staff. I was one of the major contributors in developing NRC's Part 63 regulations for the proposed Yucca Mountain Repository. As leader of the HLW public outreach team, it was my job to organize and conduct more than three dozen public meetings and workshops in Nevada and California to explain NRC's oversight role, regulatory process and review procedures. In addition, since 2006, I have been honored to serve as Chairman of the OECD Forum on Stakeholder Confidence. The Forum is an International Organization, based in Paris that examines factors that influence and contribute to public confidence in the area of radioactive waste management. In 2008, when NRC received the Yucca Mountain repository license application from the Department of Energy, I joined with my colleagues, other scientists and engineers, on the NRC staff and at NRC's contractor, the Center for Nuclear Waste

Regulatory Analyses, in carrying out an independent safety review of the Yucca Mountain license application and in preparing portions of the NRC staff's Safety Evaluation Report. Recently, I was honored to accept an invitation to serve on an international peer review panel, established for the government of Sweden, to evaluate the development and communication of the safety case submitted as part of an application for a geologic repository in that country.

One of the most satisfying and enriching aspects of my job with NRC was the ten years or so I spent on the road meeting with people in the Affected Units of Local Government and the Affected Tribe near Yucca Mountain, Nevada. I spoke with people about NRC's oversight and review processes. I helped individuals and local officials understand their options for participating in NRC's hearing process. I explained how the NRC staff reviews and considers public comments on proposed rule changes. I listened to people's concerns and learned how to be more effective as a public servant. Of the comments I heard over and over again was, "how will NRC make its safety decision?" and "how can we affect NRC's decision or take part in your process, if we don't understand how your decisions are made?" Over the course of ten years we worked at becoming more transparent. We worked hard to make our speech clearer, our documents more available and our presentations more understandable. We assured our audiences that once the application came in, we, as independent scientists and engineers, would conduct a thorough, technically sound, and fair review. We also promised that our findings would be made available for all to see and evaluate for themselves. And then, those findings, along with the application and all contentions—there were almost 300--admitted by an independent hearing board would be subject to an open and impartial public hearing before any decision would be made to deny or authorize construction of a repository at Yucca Mountain. I assured people over and over again that this would be the case, because I believed it. I believed it because this is how the NRC's licensing process has worked when NRC has decided whether or not to license reactors and other large nuclear facilities throughout our more than 35-

year history. And I believed it because it is consistent with the law, consistent with NRC's regulations, and consistent with our role as an independent safety regulator as established for us by Congress.

Then, as reported recently by the NRC's Inspector General, Chairman Jaczko ordered the Director of my office, the Office of Nuclear Materials Safety and Safeguards, to postpone issuance of Safety Evaluation Report Volumes 1 and 3. Staff and managers of the division of High-level Waste Repository Safety became concerned that the entire Commission might not be fully aware of the policy, legal and budgetary consequences of such redirection and guidance from the entire Commission was called for. I was directed to prepare a draft memorandum for the five Commissioners to be signed by the Office Director. We hoped that given an honest assessment of the facts, fair-minded members of the Commission would see the need to provide the staff with clear policy direction as we struggled to honor conflicting duties and instructions. We were told, however, that the memorandum should make no reference to any of the related policy issues, and that I should prepare it as a "status report." Over the coming months, using a highly irregular process, I was asked to incorporate a very large number of changes from senior agency managers. I was willing to comply, despite my growing reservations, so long as any description of the program's history and status remained reasonably accurate and consistent with my knowledge of the facts.

Later, in September, it became clear that, rather than just postpone issuance of individual Safety Evaluation Report volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman directed that all work on the SER must stop (including Volume 3 on post closure safety, which was already complete, and undergoing management review). Written guidance was transmitted later on October 4, 2010. The Chairman met with the staff's Yucca Mountain team just after Columbus Day. He explained that the decision to shut down the staff's review of the application was his

alone and that the staff should move to orderly shutdown of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and no Commission decision has yet been issued on whether the application may be legally withdrawn.

As the months wore on, and work on the memorandum continued, formal and informal comments from the Deputy Executive Director for Operations, the Chief Financial Officer and the General Counsel were incorporated. These comments repeatedly diluted or contradicted the language prepared by the High-level waste staff and staff of the Atomic Safety and Licensing Board Panel. Both had tried to include text describing policy, programmatic and budgetary difficulties faced by two offices struggling to cover the costs of shutting down a complex and valuable national program and infrastructure, while at the same time supporting an ongoing hearing.

Finally, in late January, 2011, I could no longer, in good conscience, agree with the memorandum as written. I formally withdrew my concurrence, consistent with NRC's procedures, on February 1, 2011. I did so because of senior managers' insistence on changes that, to me, implied that it was the NRC staff who voluntarily, or, worse still, on its own volition, terminated NRC staff's independent review of the Yucca Mountain License application, and sought to end support for a full and impartial hearing to review the application. To me, this was grossly misleading and unacceptable. In my experience, the staff members, who worked tirelessly to conduct a fair, independent and technically sound safety review, and to prepare the required Safety Evaluation Report, stood down from those obligations only with enormous reluctance and heavy hearts. The staff did not choose to abandon its duty under the law. The independent technical staff of NRC's Division of High-level Waste Repository Safety did not wake up one fine day and decide to terminate the statutory review of a license application under our review. We were directed explicitly by Chairman Jaczko to terminate the review. Yet, on

multiple occasions I was prohibited from including in the status report any declarative statement to that effect. As drafted, the memorandum made no reference to the facts surrounding the termination of the staff's review of the Yucca Mountain application. Without this crucial context, the reader is left with a mistaken impression that the termination and "orderly shutdown" of the licensing review and hearing was the staff's preferred and well-considered course of action, initiated by the technical staff. Nothing could be further from the truth.

In closing, as a member of NRC's technical staff, I remain deeply concerned that the groundbreaking regulatory work and accomplishments of many decades, made by my colleagues, not be lost or wasted. This seminal work is documented in the Draft Safety Evaluation Report volumes staff has prepared. Irrespective of what happens to Yucca Mountain, preservation and dissemination of the results of NRC staff's review and findings are of critical importance. The public deserves access to what we learned and accomplished during our safety review. If the Blue Ribbon Commission does indeed find that deep geologic disposal is "inescapable" as a solution for our nation's spent fuel and high-level radioactive wastes, the lessons that NRC's technical staff learned from reviewing and evaluating compliance of the first license application for a geologic repository in the U.S. must be preserved, studied and shared as the resources they truly are. Please help us, the NRC technical staff, keep the commitments we made to the public about the openness and transparency of NRC's safety review at Yucca Mountain. I implore you to take whatever action you deem necessary to allow completion and prompt, public release of the complete, unredacted and uncensored volumes of the NRC staff's Safety Evaluation Report. Thank you for your concern and attention to these important matters. I welcome any questions you may have.

Mr. SHIMKUS. Thank you very much for your testimony. Now we would like to turn to Dr. N. King Stablein, Branch Chief of the Division of High-Level Waste Repository Safety. Sir, your full statement is in the record. You have 5 minutes.

TESTIMONY OF NEWTON KINGMAN STABLEIN

Mr. STABLEIN. Good morning, Chairman Shimkus, Mr. Green, and members of the subcommittee. Thank you for inviting me to participate in your hearing today.

My name is Dr. Newton Kingman Stablein. I have spent most of my 27 years at the NRC involved in NRC's prelicensing and licensing activities related to DOE's efforts to support an application to construct a high-level waste geological repository at Yucca Mountain. I am currently Chief of the Project Management Branch responsible for leading the review of DOE's license application by the NRC staff and its contractor since 1987, the Center for Nuclear Waste Regulatory Analyses.

The NRC received DOE's license application in June of 2008 and, after completing an acceptance review, docketed the application in September 2008. The NRC staff prepared to complete its review of DOE's application and production of its Safety Evaluation Report, or SER, within approximately 18 months, by March or April 2010.

In March 2009, the Executive Director for Operations informed the Commission that because of reduced resources in the fiscal year 2009 budget and expected cuts in fiscal year 2010, the NRC staff would complete the SER in fiscal year 2012, 2 years later than the original schedule. The staff revamped its plans for the SER, opting to issue it in five separate volumes on a staggered schedule, with the first volume to be published in March 2010.

In January 2010, the staff informed the Atomic Safety and Licensing Board that the NRC staff would issue Volume 1 on general information and Volume 3 the post-closure volume, by no later than August and November 2010, respectively.

The staff had Volume 1 ready for publication in June 2010, 2 months ahead of the August target. Around the same time, Chairman Jaczko issued a memorandum to the EDO stating that it was in the best interests of the Agency "not to alter the schedule for the completion of SER volumes at this time" and directing that Volume 1 be published no earlier than August 2010. He added that subsequent volumes should be issued consistent with and not earlier than the schedule provided to the Commission in March 2010. Volume 1 was published in August 2010.

Volume 3 could have been ready for publication in September, but because the Chairman had directed staff not to issue it before November 2010, the final review steps leading to its publication were slowed.

The staff expected to publish Volume 3 in November 2010 and the other three volumes by March 2011. However, on September 30, the Director of the Office of Nuclear Material Safety and Safeguards instructed NRC staff to transition immediately to closure of Yucca Mountain licensing activities and to cease work on the SER volumes. Within the next couple of weeks, the Chairman met with staff and affirmed that it was his decision to discontinue work on the SER and to transition to closure activities, including the

issuance of technical evaluation reports, or TERs, instead of the SER volumes.

This decision had a profound impact on the Yucca Mountain team and its program. As a supervisor in this program, I am keenly aware of the agony experienced by the NRC staff as it dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To be denied the opportunity to finish the SER because of what appeared to be the arbitrary decision of one individual, was wrenching. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude.

Although the staff was deeply affected by the Chairman's decision, it acted immediately to follow his direction to develop TERs with no regulatory findings in place of the planned SER volumes. On March 31, 2011, the staff presented the post-closure TER to NMSS management for approval to publish. Over 2 months later, the NMSS office director disapproved publication of the document in its present form and that stated that it would need modifications to be published.

These latest developments are the most recent and clearest example of how the staff has been denied the opportunity to fulfill its duty to make its technical insights and information available to the Nation and to thereby enrich the ongoing discussion about what path to follow in dealing with nuclear waste. The work of a generation of scientists and engineers continues to be systematically suppressed to the detriment of these patriots and the Nation at large. Thank you.

[The prepared statement of Mr. Stablein follows:]

STATEMENT
BY NEWTON KINGMAN STABLEIN
CHIEF, PROJECT MANAGEMENT BRANCH B
DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
JUNE 24, 2011

Good morning, Chairman Shimkus, Mr. Green, and members of the Subcommittee.

Thank you for inviting me to participate in your hearing today. My name is Dr. Newton Kingman Stablein. After earning a Ph.D. in Geological Sciences from Northwestern University, I worked in academia and private industry for several years before joining the U.S. Nuclear Regulatory Commission (NRC) in 1984. My first position at the NRC was that of Project Manager for the NRC's Yucca Mountain team. I led the team in the completion of reviews of major U.S. Department of Energy (DOE) documents, including the Yucca Mountain draft Environmental Assessment in 1984-1985 and the Yucca Mountain Site Characterization Plan in the 1988-89 timeframe. I have spent most of my 27 years at the NRC involved in NRC's precicensing and licensing activities related to DOE's efforts to support an application to construct a High-Level Waste (HLW) geological repository at Yucca Mountain. I am currently Chief of a Project Management Branch in the Division of High-Level Waste Repository Safety (HLWRS). This Branch is responsible for leading the review of DOE's license application by the NRC staff and its contractor since 1987, the Center for Nuclear Waste Regulatory Analyses. The Yucca Mountain team that was to conduct the review of the application included many scientists and engineers who had been part of the team for twenty years or more and who were excited at the opportunity, finally, to review a license application for a proposed repository.

The NRC received DOE's license application in June 2008 and, after completing an acceptance review, docketed the application in September 2008. The Nuclear Waste Policy Act

(NWPA) mandated that the NRC was to complete its review of DOE's application within three years, with a year extension possible upon Commission request. The NRC staff prepared to complete its review of DOE's application and production of its Safety Evaluation Report (SER) within approximately eighteen months, by March-April 2010. That would leave about eighteen months for the Atomic Safety and Licensing Board (ASLB) to conduct its hearings on the application. Staff recognized this as an extremely challenging schedule and developed an innovative Project Plan to meet that timetable, determined to fulfill its responsibilities with an on-time production of a high quality SER.

In March 2009, the Executive Director for Operations (EDO) informed the Commission that because of reduced resources in the FY 2009 budget and expected cuts in FY 2010, the NRC staff would complete the SER in FY 2012, two years later than the original schedule. Faced with reduced resources, the staff revamped its plans for the SER, opting to issue it in five separate volumes on a staggered schedule, with the first volume to be published in March 2010 and the other volumes to follow.

In January 2010, the staff informed the Atomic Safety and Licensing Board that the NRC staff would issue Volume 1 (General Information) and Volume 3 (Postclosure) by no later than August and November 2010, respectively. The EDO reaffirmed this information in his March 2010 memorandum to the Commission.

The staff continued development of the five SER volumes and had Volume 1 ready for publication, with a No Legal Objection from Agency attorneys in hand, in June 2010, two months ahead of the August target. Around the same time, Chairman Jaczko issued a memorandum to the EDO stating that it was in the best interests of the Agency "not to alter the schedule for the completion of SER volumes at this time" and directing that Volume 1 be published no earlier than August 2010. He added that subsequent volumes should be issued consistent with and not earlier than the schedule provided to the Commission in March 2010. Volume 1 was published in August 2010.

Volume 3, viewed as the most significant of the SER volumes because of its assessment of DOE's safety case for how the repository would perform over the one million year lifetime of the repository, could have been ready for publication in September 2010, but because the Chairman had directed staff not to issue it before November 2010, the final review steps leading to its publication were slowed.

The staff continued work on the remaining volumes, with the expectation that Volume 3 would be issued in November 2010 and that the remaining three volumes would be published by March 2011. However, on September 30, 2010, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) instructed NRC staff to transition immediately to closure of Yucca Mountain licensing activities and to cease work on the SER volumes. Within the next couple of weeks, the Chairman met with staff and affirmed that it was his decision to discontinue work on the SER and to transition to closure activities, including the issuance of Technical Evaluation Reports (TERs) instead of the SER volumes. It was pointed out to him at this time that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear that, although he could choose that path, he considered that it would be "more political" to publish the SER volumes with regulatory findings than to issue them as TERs devoid of such findings.

This decision had a profound impact on the Yucca Mountain team and its program. As a supervisor in this program, I am keenly aware of the agony experienced by the NRC staff as it dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To be denied the opportunity to finish the SER, the culmination of those years of prelicensing and licensing activity, because of what appeared to be the arbitrary decision of one individual, was wrenching. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a major program that has existed for almost 30 years. It

felt to the staff as if the Chairman had casually dismissed the staff's dedicated efforts and sacrifices of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled.

Although the staff was deeply affected by the Chairman's decision, it acted immediately to follow his direction to develop TERs with no regulatory findings in place of the planned SER volumes. The staff took great pains to preserve as much of the technical content of the former SER volumes as possible while carefully eliminating references to findings with respect to Part 63, the regulation for licensing the Yucca Mountain repository. On March 31, 2011, the staff presented the Postclosure TER, complete and supported by a No Legal Objection from the Agency attorneys, to NMSS management for approval to publish. Over two months later, the NMSS Director informed the Acting Director of HLWRS that she did not approve publication of the document in its present form and that it would need modifications to be published.

These latest developments are the most recent and clearest example of how the staff has been denied the opportunity to fulfill its duty to make its technical insights and information available to the Nation and to thereby enrich the ongoing discussion about what path to follow in dealing with nuclear waste. The work of a generation of scientists and engineers continues to be systematically suppressed, to the detriment of these patriots and the Nation at large.

Mr. SHIMKUS. Thank you for your testimony. Now, I would like to turn to Mr. Aby Mohseni, Acting Director in the Division of High-Level Waste Repository Safety. Welcome. Your full statement is into the record, and you have 5 minutes.

TESTIMONY OF ABY MOHSENI

Mr. MOHSENI. Thank you very much Mr. Chairman, Ranking Member Green, and members of the committee, for the opportunity to be here today. My name is Aby Mohseni. I worked for the State of Washington before joining the NRC in 1990. I became the Deputy Director for Licensing and Inspections in the Division of High-Level Waste Repository Safety in 2006. I am currently the Acting Director of this Division. I will briefly describe the division's role, accomplishments and challenges.

The U.S. Congress enacted the Nuclear Waste Policy Act directing and entrusting the NRC scientists to determine the safety and security of the Yucca Mountain Geological Repository for the Nation. NRC has invested almost 3 decades preparing for and conducting a safety review of the proposed Yucca Mountain design.

My staff and I are quite used to challenges. Reviewing the performance of a mountain over time frames of a million years using a first-of-a-kind, risk-informed, performance-based methods is a challenge. But that scientific challenge seemed to be the easy one. Less than a year after the Department of Energy submitted its long-awaited license application to build a geological repository at Yucca Mountain, Nevada, in 2008, our budget was cut by 30 percent. Despite that and subsequent cuts, we, NRC staff and scientists, impressed with the task entrusted to us for the Nation's safety, absorbed the pressures and maintained our focus on our mission.

Although resilient from our adaptation to budgetary pressures, we were unprepared for the political pressures and manipulation of our scientific and licensing processes that would come with the appointment of Chairman Jaczko in 2009. We believe that any political manipulation of the scientific and licensing process is an assault on the responsibility to the NRC mandated by Congress.

We staff felt that manipulation at the Commission level, as described in the NRC's Inspector General report issued earlier this month, permeated the activities of my division by some senior managers.

For example, some NRC senior managers directed the staff to suppress information to the Commission by providing them a status report instead of a policy report on the closure of Yucca Mountain. Whereas a policy report empowers the Commission with the staff's findings and recommendations required to make sound policy for the Nation's safety, a status report merely informs them of decisions made, leaving the burden of discovery on individual Commissioners.

Additionally, some senior managers contributed to the manipulation of the budget process and information to apparently make sure that the Yucca Mountain project would be left unfunded even if the license application was still before the NRC.

Furthermore, apparently at the direction of the Chairman and with the aid of some senior managers, the disclosure to the rest of

the Commission of the staff's views on the impacts of budget cuts and allocations were suppressed. I note that keeping the full Commission fully and currently informed is a statutory requirement.

Despite being entrusted with independent decision making, when confronted with these concerns by the Office of Inspector General, these senior managers essentially responded that the Chairman's office made them do it. I ask who holds these managers accountable? Chairman Jaczko?

We at the NRC are at a crossroads. Apparently, the NRC's senior leadership is ineffective in upholding the integrity of this Agency. Politics are influencing some of the NRC's staff's work. The question is, could politics at some point affect the staff's technical and regulatory findings and decisions? This is not where an independent safety organization should be. If the NRC were to find any of our licensees so lacking, we would require of them a corrective action plan. We should hold ourselves at least to the same standards. The NRC needs to enact a corrective action plan.

I cannot overemphasize the importance of your oversight role. If it were not for your oversight, much of what has been revealed would remain behind closed doors. Given the recent revelations, I am not sure that you, the oversight Committee, made up of the representatives of the citizens of United States of America, entrust us at the NRC to always be and remain objective, independent and credible to ensure the health and safety of the American public. We need to re-earn your trust.

Thank you for this opportunity.

[The prepared statement of Mr. Mohseni follows:]

STATEMENT

BY ABY MOHSENI

ACTING DIRECTOR, DIVISION OF HIGH LEVEL WASTE REPOSITORY SAFETY

OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS

UNITED STATES NUCLEAR REGULATORY COMMISSION

TO THE

HOUSE COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

US HOUSE OF REPRESENTATIVES

JUNE 24, 2011

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Department of Energy submitted its long awaited License Application to build a Geological Repository at Yucca Mountain, Nevada, in 2008, our budget was cut by over 30%. Despite that and subsequent cuts, we, NRC staff and scientists, impressed with the task entrusted to us for the nation's safety, absorbed the pressures and maintained our focus on our mission.

Although resilient from our adaptation to budgetary pressures, we were unprepared for the political pressures and manipulation of our scientific and licensing processes that would come with the appointment of Chairman Jaczko in 2009. We believe that any political manipulation of the scientific and licensing process is an assault on the responsibility to the NRC mandated by Congress.

We, staff, felt that manipulation at the Commission level, as described in the NRC's Inspector General report issued earlier this month, permeated the activities of my Division by some senior managers. For example, some NRC senior managers directed the staff to suppress information to the Commission by providing them a Status report instead of a Policy report on the closure of Yucca Mountain. Whereas a Policy report empowers the Commission with the staff's findings and recommendations required to make sound policy for the nation's safety, a Status report merely informs them of decisions made, leaving the burden of discovery on individual Commissioners. Additionally, some senior managers contributed to the manipulation of the budget process and information to apparently make sure that the Yucca Mountain project would be left unfunded even if the License Application was still before the NRC. Furthermore, apparently at the direction of the Chairman and with the aid of some senior managers, the disclosure to the rest of the Commission of the staff's views on the impacts of budget cuts and allocations were suppressed. I note that keeping the full Commission fully and currently informed is a statutory requirement.

Despite being entrusted with independent decision making, when confronted with these concerns by the OIG, these senior managers essentially responded that the Chairman's office made them do it. I ask who holds these managers accountable? Chairman Jaczko?

We at the NRC are at a crossroads. Apparently, the NRC's senior leadership is ineffective in upholding the integrity of this Agency. Politics are influencing some of the NRC's staff's work. The question is could politics at some point affect the staff's technical and regulatory findings and decisions? This is not where an independent Safety organization should be. If the NRC were to find any of our licensees so lacking, we would require of them a corrective action plan. We should hold ourselves at least to the same standards. The NRC needs to enact a corrective action plan.

I cannot overemphasize the importance of your oversight role. If it were not for your oversight, much of what has been revealed would remain behind closed doors. Given the recent revelations, I am not sure that you, the oversight Committee, made up of the representatives of the citizens of United States of America, entrust us at the NRC to always be and remain objective, independent, and credible to ensure the health and safety of the American public. We need to re-earn your trust.

I thank you for this opportunity.

Mr. SHIMKUS. Thank you, Mr. Mohseni. Now I would like to turn to Mr. Lawrence Kokajko, Acting Deputy Director for the Office of Nuclear Material Safety and Safeguards at the NRC. Sir, again, your full statement is in the record. You have 5 minutes.

TESTIMONY OF LAWRENCE E. KOKAJKO

Mr. KOKAJKO. Thank you. Mr. Chairman, Ranking Member Green, and members of the Subcommittee, my name is Lawrence Kokajko, and I am honored to appear before you today to provide my perspective on those internal NRC issues——

Mr. SHIMKUS. Can you check——

Mr. KOKAJKO. Perspective on those internal issues——

Mr. SHIMKUS. And I hate to interrupt you. Maybe pull it a little bit closer to you.

Mr. KOKAJKO. Hello?

Mr. SHIMKUS. That is much better.

Mr. KOKAJKO. Thank you. I will just start over, if you don't mind. Mr. Chairman, Ranking Member Green, and members of the subcommittee, my name is Lawrence Kokajko, and I am honored to appear before you today to provide my perspective on those internal issues associated with the review of the Department of Energy's license application for the proposed repository at Yucca Mountain, Nevada.

Currently, I am the acting Deputy Office Director for the Office of Nuclear Material Safety and Safeguards, although my official position is the Director of the Division of High-Level Waste Repository Safety. I have been with the NRC since 1989, and I have regulatory experience in reactors, materials and waste.

I had always wanted to be associated with a program of national significance, and when the opportunity to be the Director presented itself, I enthusiastically accepted. Part of my enthusiasm was due to the repository safety staff itself. All employees of the NRC are dedicated to its mission to assure safety, security and environmental protection, and the members of the repository safety division are no exception.

Moreover, in 1987, agency leadership, with great foresight, contracted with the Southwest Research Institute that organized the Center for Nuclear Waste Regulatory Analyses as the NRC's only federally funded research and development center and to be a conflict-of-interest-free entity. Both the NRC and Center employees have expertise in geological and related sciences and engineering, and they are dedicated professionals that have spent decades in preparation for this application.

Besides wanting to work on a program of national significance, I wanted to work with these talented professionals. I recognized their unique set of knowledge, skills and abilities and the challenging subject matter and context for this important major Federal action. Quite frankly, I am very concerned about the loss of this disposal expertise as spent nuclear fuel continues to increase and the U.S. program is now uncertain. I hasten to add that geologic disposal remains the internationally recognized means to isolate high-level radioactive waste for very long time periods.

The Nuclear Regulatory Commission is an independent agency, and as such, the agency has the responsibility to demonstrate this

independence by openness and transparency in its deliberations and decision making. This can be displayed by collaborating and assuring all information is available and discussed. Agency independence and internal processes should be jealously guarded, and the appearance of political influence in such deliberations and decision-making should be avoided at all costs.

Given that the Congress did not amend the Nuclear Waste Policy Act or enact other legislation to discontinue development of Yucca Mountain, other legitimate internal processes could have occurred. For example, the Atomic Safety and Licensing Board could have agreed that the Department of Energy could withdraw the repository application; the Commission itself could have overturned the June 29, 2010, Atomic Safety and Licensing Board's decision promptly; or alternatively, the collective Commission could have decided through a vote and subsequent staff requirements memorandum that the staff should formally suspend its review pending legislative or other adjudicatory action.

Staff would have willingly followed any outcome from a faithfully executed legitimate process. Until such decision, staff was under the distinct impression that it could continue its safety review as long as sufficient funding existed. Further, I would go so far to say that many think as I do, the Nation paid for this review, and the Nation should get it.

I would like to have seen the Commission act collegially to address this issue. As noted in the recent Office of Inspector General report, the decision to close the program by the end of fiscal year 2011 was made without the entire Commission being fully informed or acting in concert. When this became apparent, executive staff leadership should have acted as a brake to afford the Commission information and time to assess and develop appropriate program direction. This would have enabled more budget and program information to rise to the entire Commission and would have precluded decisions based on incomplete information or perception.

Regardless of the NRC's evaluation of the technical merits of the application, the staff takes no position on actual construction and operation of a proposed repository. Ultimately, it is up to the Congress to determine whether to build and operate the facility. Any such national policy decision by Congress would be based upon the science and engineering performed by the Department of Energy and the subsequent safety evaluation and adjudication by the NRC, assuring that this meets the standards set by the Environmental Protection Agency.

NRC requires complete and accurate information in all material respects in relation to the repository license application. The Department of Energy has not identified a safety defect in the application; thus, it remains valid and before the NRC. I believe science and the scientific process must inform and guide NRC's regulatory decision making. I further believe we have been open and transparent with our stakeholders with regard to our regulatory duties as this Chairman and this Commission have emphasized. Technical staff associated with this program are dismayed by what has happened thus far, and we would hope the day comes soon when we can return to being boring regulators.

For the record, this is not meant to be a pejorative remark. Our mission and our work are vitally important to the Nation, and we take our responsibility seriously. The Agency should always be in the background as the fundamental pillar, assuring safety as our number one priority, keeping in mind that we must be ever vigilant. This is not exciting work to many, but we all appreciate our roles as Federal employees, assuring the safety of our fellow citizens. This current situation is distracting and does the Agency and its people no good.

Thank you.

[The prepared statement of Mr. Kokajko follows:]

**STATEMENT BY
LAWRENCE E. KOKAJKO
ACTING DEPUTY OFFICE DIRECTOR
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
US NUCLEAR REGULATORY COMMISSION
TO THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
US HOUSE OF REPRESENTATIVES
JUNE 24, 2011**

Mr. Chairman, Ranking Member Green, and members of the Subcommittee, I am honored to appear before you today to provide my perspective on those internal NRC issues associated with the review of the Department of Energy's license application for the proposed repository at Yucca Mountain, Nevada.

Currently, I am the acting Deputy Office Director for the Office of Nuclear Material Safety and Safeguards at the NRC, although my official position is the Director of the Division of High-Level Waste Repository Safety. I have been with the NRC since 1989, and I have regulatory experience in reactors, materials and waste.

I had always wanted to be associated with a program of national significance, and when the opportunity to be the Director presented itself, I enthusiastically accepted. Part of my enthusiasm was due to the Repository Safety staff itself. All employees of the NRC are dedicated to its mission to assure safety, security and environmental protection, and the members of the Repository Safety division are no exception. Moreover, in 1987, agency leadership, with great foresight, contracted with the Southwest Research Institute that organized the Center for Nuclear Waste Regulatory Analyses as the NRC's only federally-funded research and development center and to be a conflict of interest free entity. Both the NRC and Center employees have expertise in geological and related sciences and engineering, and they are

dedicated professionals that have spent decades in preparation for this application. Besides wanting to work on a program of national significance, I wanted to work with these talented professionals. I recognized their unique set of knowledge, skills and abilities, and the challenging subject matter and context for this important major federal action. Quite frankly, I am very concerned about the loss of this disposal expertise as spent nuclear fuel continues to increase and the US program is now uncertain. I hasten to add that geologic disposal remains the internationally recognized means to isolate high-level radioactive waste for very long time periods.

The Nuclear Regulatory Commission is an independent agency, and as such, the agency has the responsibility to demonstrate this independence by openness and transparency in its deliberations and decision-making. This can be displayed by collaborating and assuring all information is available and discussed. Agency independence and its internal processes should be jealously guarded, and the appearance of political influence in such deliberations and decision-making should be avoided at all costs.

Given that the Congress did not amend the Nuclear Waste Policy Act or enact other legislation to discontinue development of Yucca Mountain, other legitimate internal processes could have occurred. For example:

- The Atomic Safety and Licensing Board could have agreed that the Department of Energy could withdraw the repository license application;
- The Commission itself could have overturned the Atomic Safety and Licensing Board's decision promptly; or alternatively,
- The collective Commission could have decided through a vote and subsequent Staff Requirements Memorandum that the staff should formally suspend its review pending legislative or adjudicatory action.

Staff would have willingly followed any outcome from a faithfully executed legitimate process. Until such decision, staff was under the distinct impression that it could continue its safety review as long as sufficient funding existed. Further, I would go so far to say that many think as I do - that the Nation paid for this review, and the Nation should get it.

I would have liked to have seen the Commission act collegially to address this issue. As noted in the recent Office of Inspector General report, the decision to close the program by the end of Fiscal Year 2011 was made without the entire Commission being fully informed or acting in concert. When this became apparent, executive staff leadership should have acted as a brake to afford the Commission information and time to assess and develop appropriate program direction. This would have enabled more budget and program information to rise to the entire Commission and would have precluded decisions based on incomplete information or perception.

Regardless of the NRC's evaluation of the technical merits of the application, the staff takes no position on actual construction and operation of a proposed repository. Ultimately, it is up to the Congress to determine whether to build and operate the facility. Any such national policy decision by Congress would be based upon the science and engineering performed by the Department of Energy and the subsequent safety evaluation and adjudication by the NRC, assuring that this meets the standards set by the Environmental Protection Agency.

NRC requires complete and accurate information in all material respects in relation to the repository license application (10 CFR 63.10). The Department of Energy has not identified a safety defect in the application; thus, it remains valid and before the NRC. I believe science and the scientific process must inform and guide NRC's regulatory decision-making. I further

believe we have been open and transparent with our stakeholders with regard to our regulatory duties as this Chairman and this Commission have emphasized. Technical staff associated with this program are dismayed by what has happened thus far, and we would hope the day comes soon when we can return to being boring regulators.

This concludes my remarks, and I look forward to your questions.

Mr. SHIMKUS. Thank you. And we will now turn to Ms. Catherine Haney, Director of the Office of Nuclear Materials Safety and Safeguards at the NRC. Again, your full statement is in the record. You have 5 minutes and welcome.

TESTIMONY OF CATHERINE HANEY

Ms. HANEY. Thank you. Good morning, Chairman Shimkus and Ranking Member Green and members of the subcommittee. I am Catherine Haney. I am the Director of the Office of Nuclear Material Safety and Safeguards at the NRC. I have held this position since May 10 of 2010, previously serving as Deputy Director in the office. I am responsible for management and oversight of three program areas at NRC, the fuel cycle safety and safeguards, spent fuel storage and transportation and high level waste repository safety.

I am here today to discuss our activities regarding the NRC's regulatory oversight of the proposed Yucca Mountain high-level nuclear waste repository.

The Department of Energy submitted a license application in June 2008 to seek authorization to construct the geologic repository at Yucca Mountain. The NRC accepted the application for review in September 2008 and commenced a two-pronged review process, first, the technical review of the license application by the NRC staff and second, a hearing process before the Atomic Safety and Licensing Board. The results of the staff's technical evaluation are to be documented in a Safety Evaluation Report.

Before I was appointed by the Commission to the position of Office Director in May 2010, the Department of Energy had filed a motion to withdraw the Yucca Mountain application before the Atomic Safety and Licensing Board. As a result, my predecessor had directed the staff to start planning an orderly closure as a contingency and for documenting the licensing review while we continued our development of the remaining volumes of the Safety Evaluation Report. At the end of June 2010, the Licensing Board denied DOE's request to withdraw the license application. This decision by the Board has been under review by the Commission since early July 2010. The staff issued Volume 1 of the safety evaluation review in August 2010.

Over the course of the remainder of fiscal year 2010, my staff continued with the licensing review and the preparation of an orderly closure plan in case the Commission overturned the Board's June 2010 decision or the Congress enacted the appropriations requested by the President in the 2011 budget.

For fiscal year 2011, the President's budget requested \$10 million for the close-out of the high level waste program and no funds from the Nuclear Waste Fund for the Department of Energy's high-level waste program. On October 1, 2010, while operating under a continuing resolution and consistent with direction from the Chairman, we began a process of transitioning to close-out of the Yucca Mountain program. Specifically, we began the process of documenting and preserving the staff's review, which included converting the remaining volumes of the draft Safety Evaluation Report into a Technical Evaluation Report. The objective of the TER is to capture the knowledge gained during the last 30 years in preparing for and conducting the Yucca Mountain licensing review. It

is our belief that by thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be best positioned to respond to future direction from the Commission, Congress or the courts.

I believe this action was consistent with Commission policy, the general principles of appropriations law, and applicable guidance from the Office of Management and Budget and the Government Accountability Office on expenditure of funds under continuing resolutions.

In September 2010, my staff began to draft a memo to the Commission that would provide an update on the Yucca Mountain Program. The scope and purpose of the memorandum evolved over a number of weeks as external and agency internal factors, such as budget parameters, individual Commissioner and Commission actions, and inquiries from Congress extended the dialogue regarding the future of the Yucca Mountain program. On February 4, I signed this memorandum that provided the information I felt needed to be conveyed to the Commission to keep the Commission fully and currently informed. That memorandum outlined with some specificity the various actions completed, underway and planned. These included converting the remaining volumes of the Safety Evaluation Report into a Technical Evaluation Report; secondly, archiving the institutional, regulatory and technical information amassed over nearly 3 decades of evaluation of Yucca Mountain; redirecting the Center for Nuclear Waste Regulatory Analysis to focus its Yucca Mountain-related efforts on the preservation of knowledge and records management; continuing to support the Office of General Counsel on any adjudicatory hearing-related matters; videotaping interviews with departing and other senior technical staff for knowledge; initiating discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility; and lastly, keeping the Licensing Board informed of the status of the staff's application review activities.

Our efforts to thoroughly document and capture the knowledge from our Yucca Mountain activities continue, with a goal of completing these activities by the end of fiscal year 2011. No resources have been requested for this activity in fiscal year 2012.

As we have been proceeding with the orderly closure of the Yucca Mountain regulatory program, we have also been implementing our strategy for integrated spent fuel management. Given the expected delay in the availability of a repository for high-level waste, the Nation will accumulate an increasing inventory of spent nuclear fuel. Consistent with NRC's mission of ensuring safety and security, the NRC's objective in this strategy is to develop the regulatory tools, analyses and data needed to evaluate and support the safe and secure management of this increasing inventory. We are pursuing this strategy in collaboration with a broad array of external stakeholders.

And this completes my prepared remarks. Thank you.

[The prepared statement of Ms. Haney follows:]

**Statement of Catherine Haney
Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
U.S. House of Representatives
June 24, 2011**

Good morning, Chairman Shimkus and Ranking Member Green. I am Catherine Haney, Director of the Office of Nuclear Safety and Safeguards at the U.S. Nuclear Regulatory Commission. I have held this position since May 10, 2010, serving as Deputy Office Director immediately prior to that. I am responsible for management and oversight of three program areas: fuel cycle safety and safeguards, spent fuel storage and transportation, and high level waste repository safety. I am here today to discuss agency activities regarding the NRC's regulatory oversight of the proposed Yucca Mountain high-level nuclear waste repository.

The Department of Energy submitted a license application in June 2008 to seek authorization to construct the geologic repository at Yucca Mountain. The NRC accepted the application for review in September 2008 and commenced a two-pronged review process: (1) the technical review of the license application by the NRC staff, and (2) the hearing process before the Atomic Safety and Licensing Board. The results of the staff's technical review are documented in a Safety Evaluation Report (SER). For the Yucca Mountain licensing review, the staff decided to produce the SER in five volumes.

Before I was appointed by the Commission to the position of Office Director in May 2010, the Department of Energy had filed a motion to withdraw the Yucca Mountain application before the Atomic Safety and Licensing Board. As a result, my predecessor had directed the staff to start planning for orderly closure as a contingency and for documenting the licensing review while we continued our development of the remaining volumes of the Safety Evaluation Report. At the

end of June 2010, the Licensing Board denied DOE's request to withdraw the license application; this decision of the Board has been under review by the Commission since early July 2010. The staff issued Volume 1 of the SER on schedule in August 2010. Over the course of the remainder of fiscal year 2010, my staff continued with the licensing review and the preparation of an orderly closure plan in case the Commission overturned the Board's June 2010 decision or the Congress enacted the appropriations requested by the President in the FY2011 budget.

For fiscal year 2011, the President's budget requested \$10 million for the close-out of the high level waste program and no funds from the Nuclear Waste Fund for the Department of Energy's high-level waste program. On October 1, 2010, while operating under a continuing resolution and consistent with direction from the Chairman, we began the process of transitioning to close-out of the Yucca Mountain program. Specifically, we began the process of documenting and preserving the staff's review, which included converting the remaining volumes of the draft Safety Evaluation Report into a Technical Evaluation Report (TER). The objective of the TER is to capture the knowledge gained during the last 30 years in preparing for and conducting the Yucca Mountain licensing review. This knowledge will be invaluable in future reviews of proposed repositories. When the TER is complete, we will publish it as a NUREG report in the knowledge management series. It is our belief that by thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be best positioned to respond to any future direction from the Commission, Congress or the courts. I believe this action was consistent with Commission policy, the general principles of appropriations law, and applicable guidance from the Office of Management and Budget and the Government Accountability Office on expenditure of funds under continuing resolutions. We have continued this work consistent with the 2011 appropriations bill ultimately signed into law this spring, which provided funding consistent with the President's original request.

In September 2010, my staff began to draft a memorandum to the Commission that would provide an update on the Yucca Mountain Program. The scope and purpose of the memorandum evolved over a number of weeks as external and agency internal factors, such as budget parameters, individual Commissioner and Commission actions, and inquiries from Congress extended the dialogue regarding the future of the Yucca Mountain program. On February 4th, I signed this memorandum that provided the information I felt needed to be conveyed to the Commission to keep the Commission fully and currently informed. That memorandum outlined with some specificity the various actions completed, underway, and planned. These included:

- Converting the remaining volumes of the SER into the TER that will document the staff's technical review activities and technical conclusions, but will contain no staff findings or regulatory compliance;
- Archiving the institutional, regulatory, and technical information amassed over nearly 3 decades of evaluation of Yucca Mountain and other potential sites for deep geologic disposal of spent fuel and high level waste;
- Redirecting the Center for Nuclear Waste Regulatory Analyses to focus its Yucca Mountain-related efforts on the preservation of knowledge and records management;
- Establishing priorities for action commensurate with available resources;
- Continuing to support the Office of General Counsel on adjudicatory hearing-related matters;
- Videotaping interviews with departing and other senior technical staff for knowledge capture and as a future training resource;

- Initiating discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility infrastructure; and
- Keeping the Licensing Board informed of the status of the staff's application review activities.

Our efforts to thoroughly document and capture the knowledge from our Yucca Mountain activities continue, with a goal of completing these activities by the end of fiscal year 2011. No resources are requested for this activity in fiscal year 2012.

As we have been proceeding with the orderly closure of the Yucca Mountain regulatory program, we have also been implementing our strategy for integrated spent fuel management. Given the expected delay in the availability of a repository for high-level waste, the Nation will accumulate an increasing inventory of spent nuclear fuel. Consistent with NRC's mission of ensuring safety and security, the NRC's objective in this strategy is to develop the regulatory tools, analyses, and data needed to evaluate and support the safe and secure management of this increasing inventory. This necessarily includes the licensing, research, oversight, rulemaking, international, and other activities necessary to accomplish the agency's mission for a variety of waste management strategies that the Administration and the Congress may pursue. We are pursuing this strategy in collaboration with a broad array of external stakeholders.

This completes my prepared remarks. I would be happy to address any questions you might have.

Mr. SHIMKUS. Thank you very much. Thank you all for your statements and your testimony. Before we go to questions, I ask unanimous consent that the contents of the document binder be introduced into the record and to authorize staff to make any appropriate redactions. Without objections, the documents will be entered into the record with any redactions the staff determines are appropriate.

[The information appears at the conclusion of the hearing.]

Mr. BARTON. Mr. Chairman, may I ask just a parliamentary question?

Mr. SHIMKUS. You are risking it but you can.

Mr. BARTON. We have a document before us that says "not for public disclosure." Is that just for the Members' review or are we allowed to refer to it in the questioning?

Mr. SHIMKUS. That submission is part of what is in the document binder, and you can refer to it.

Mr. BARTON. We can refer to it? Thank you, Mr. Chairman.

Mr. SHIMKUS. Thank you. Now I would like to recognize myself for the first 5-minute round of questioning.

Let me start with you, Dr. Kotra. Just to be clear, the division of high-legal waste repository safety is responsible for providing the technical analysis of the Yucca Mountain license application. Is that correct?

Ms. KOTRA. That is correct, sir.

Mr. SHIMKUS. So this is really where the bread and butter work on the license review is done, correct?

Ms. KOTRA. Yes, in coordination with our dedicated contractor at the Center for Nuclear Waste Regulatory Analysis as Mr. Kokajko explained.

Mr. SHIMKUS. And why is it important that the staff perform their work objectively and in a non-partisan manner?

Ms. KOTRA. I think it is absolutely vital that the decision makers have at their disposal a decision based upon science, objective, unbiased assessment of the applications put before the Commission for any facility based upon the principles of science, physics and evaluated against the Commission's regulations. That is how this Agency has operated for over 35 years.

Mr. SHIMKUS. And you have been there—

Ms. KOTRA. Twenty-seven years.

Mr. SHIMKUS [continuing]. A big part of that 35 years?

Ms. KOTRA. That is correct.

Mr. SHIMKUS. In your testimony, you also spend a considerable amount of time in public outreach about the Agency's work on Yucca review, is that correct? And what is the message about the NRC regulatory process that you have attempted to convey to the public?

Ms. KOTRA. Our independence, our transparency, our willingness to be open to contentions from parties that, yes, we do as thorough and as objective a review as our great body of scientists and staff and contractors will allow, but that is now sufficient that our rules allow for a full and open and non-partisan, impartial hearing process where those parties are free to bring forward criticisms not just of what the applicant provides but also what the staff finds in its independent review. And if those are admitted to the hearing and

as you well know, the vast majority of over 318 contentions were admitted by the hearing board, and we were prepared to go forward and adjudicate those in our hearing process. So what I told the stakeholders in southern Nevada and in California was if there is merit and those contentions are backed by science and engineering evidence and witnesses, then the board hears those, and on those occasions when the staff is wrong, the Board may find against the staff. And that is OK. That is how the process is supposed to work.

Mr. SHIMKUS. Your message really rests on integrity.

Ms. KOTRA. Absolutely.

Mr. SHIMKUS. So when it comes to integrity of the process, do you believe that the actions by the NRC leadership over the past year have affected the integrity of the NRC?

Ms. KOTRA. I think it has cast a very serious cloud on that, and it troubles me deeply.

Mr. SHIMKUS. Do you believe the actions by leadership at the NRC have undermined what you have tried to convey to the public?

Ms. KOTRA. It is stark contrast to what I have tried to convey to the public, yes, sir.

Mr. SHIMKUS. So let me just turn to Dr. Stablein, Dr. Mohseni, Dr. Kokajko. Do you agree with this initial round of questioning on NRC on integrity and that there is now a question of the entire NRC process based upon leadership? Dr. Stablein?

Mr. STABLEIN. I definitely do. This is one of the things that we are fighting to get back.

In the 27 years I have been with the Agency, we have been very proud of a couple of things: our independence from political pressures and our scientific integrity and the integrity of our process to protect the public health and safety. I think that has slipped, and we are in danger of losing that.

Mr. SHIMKUS. Mr. Mohseni?

Mr. MOHSENI. I do agree.

Mr. SHIMKUS. Mr. Kokajko?

Mr. KOKAJKO. Right. Thank you. I can't speculate on other parts of the NRC, but I have always felt that if you could be turned in one area, you can be turned in another. So I do have some concerns.

Mr. SHIMKUS. The NRC is still a Federal agency. A lot of employees in diverse areas. Is this specific to your area or is this feeling being spread throughout the entire NRC?

Ms. KOTRA. Is that a question—

Mr. SHIMKUS. It is whoever would like to respond.

Ms. KOTRA. I would just say that my area of expertise and experience, at least recently, at least since 1993, is confined to the division of high-level waste repository safety.

Mr. SHIMKUS. Anyone else like to? My time is expired, and I would like to recognize the Ranking Member, Mr. Green, from Texas for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Like I said earlier, I would like to thank each of you for coming before us today because I have a concern about the decision that was made or hasn't been made but the actions that have been taken based on what is hap-

pening at the Yucca Mountain, and that is why this Subcommittee is looking at it.

And I appreciate you as career employees. I know most of you have been with the Agency since the late '80s, early '90s, so you have actually served under four different Presidents.

Ms. Haney, I know you became Deputy Director in May of 2010. How long have you been with the Agency?

Ms. HANEY. A little over 20 years. I started in 1981, served 2 years with the Agency, worked as a consultant for 6 years and then came back in the late '80s, and since 1989 I have been employed with the Agency. So I, too, have as long a record as my colleagues at the table.

Mr. GREEN. OK. I guess my concern is that the American people, we expect you to do your job, and you have been there for all these years. Has there ever been, that any of you can remember, something like what has happened at the Commission that there was a decision made based on a continuing resolution? I don't have any doubt that it was legal, but again, Congress made the decision years ago to decide on Yucca Mountain, and we haven't done as good a job as, you know, you testified in providing funding. But the decision was made to not officially withdraw the application but to do everything you could by shutting it down. Do you remember any other chair or anything else in your experience since the late '80s?

Ms. KOTRA. I can recall of no precedent for this action, sir.

Mr. STABLEIN. It is unprecedented in my experience.

Mr. MOHSENI. I do not recall, but it doesn't mean I am aware of everything that has happened in the Agency. But for something that has become so apparent, so critical, so much challenge internally by all of us, including Ms. Haney, we all challenged that decision when it first arrived. So it is not like there is precedence for it and we would have accepted it based on precedence, at least in my memory that it never came up that there is a basis for such a redirection under a continuing resolution when you have carry-over funds that carry you into the next year. And almost every year we have had continuing resolutions but none that would have done such a dramatic redirection in a major national program.

Mr. KOKAJKO. No, sir.

Mr. GREEN. Yes, sir?

Mr. KOKAJKO. No, sir, I don't recall anything similar in the past, and I have worked for very short times in the Executive Director's Office as well as Commission offices.

Mr. GREEN. Ms. Haney, in your—

Ms. HANEY. I am not aware of any, either.

Mr. GREEN. Ms. Haney, let me ask you about your memo of February the 4th. This memo outlines the status of NRC staff work on the closure of Yucca Mountain licensing review and appears several times in the witness testimony. When you first decided to write the memo to the Commission in last year, what was its purpose?

Ms. HANEY. When I first worked with staff to develop the memo, it was probably in the early September timeframe, and at that point, we did not have any guidance from either the Executive Director of Operations or from the Commission level with regards to the future of the program. I was aware of statements in the budget statements in the document for the fiscal year 2012 budget. So con-

sistent with what past practice, I thought it was prudent to prepare a status memo to the Commission telling them that we—just reinforcing our March memo to them that we could plan to use carry-over funds from fiscal year 2010 into 2011 to complete the Safety Evaluation Report. And by doing that I would take it to the Commission, give them the opportunity to know what our plans were. If they had a differing view, they could, through internal procedures, let staff know of that.

Mr. GREEN. I only have 5 minutes, but last fall with the developments regarding the direction of high-level waste, the Chairman told the staff to begin closure of Yucca Mountain licensing review and stop work on the safety evaluations. Commissioner Ostendorff asked the Commission to overturn it, but it failed. Did these events change the purpose and scope of your memo?

Ms. HANEY. Yes.

Mr. GREEN. Mr. Mohseni, the suggestion in your testimony that you quote senior managers directed the staff to suppress information to the Commission by providing a status report instead of a policy report on the closure of Yucca Mountain. Ms. Haney, how did you respond to that? Did anyone direct you to suppress information to the Commission?

Ms. HANEY. No.

Mr. GREEN. Dr. Kotra, you expressed in your testimony the final version of the memo implied that the NRC staff was who decided to terminate the NRC's review of the license application. Is that one of the reasons you cite for submitting the formal non-concurrence with the memo?

Ms. KOTRA. That is the primary reason that I submitted a non-concurrence, sir.

Mr. GREEN. OK. I assumed it was common knowledge the Chairman made the decision to close down the program?

Ms. KOTRA. Not initially.

Mr. GREEN. Dr. Kotra, does anyone at NRC or the Commission really believe that this was the technical staff's decision?

Ms. KOTRA. Certainly not now.

Mr. GREEN. Mr. Chairman, I know I am over my time but one, I appreciate you being here. I am frustrated because we spent \$15 billion in a decision made by Congress in the 1980s, for good or bad, and we are just throwing that out and starting over again.

So, Mr. Chairman, thank you for the time.

Mr. SHIMKUS. I thank my colleague. I would like to turn now to the chairman emeritus, Mr. Barton, for 5 minutes.

Mr. BARTON. I am going to try to do it in 5 minutes. It is going to be difficult. I first just have some general housekeeping questions. I assume that you all are all SES employees?

Ms. KOTRA. No, sir.

Mr. STABLEIN. I am not.

Mr. MOHSENI. I am.

Mr. BARTON. Let us start over again. What are you? Each of you explain your status, the type of employee you are at the NRC.

Ms. KOTRA. I am a senior-level project manager, technical staff. I am not an SES employee.

Mr. BARTON. Is anybody here a political appointee?

Ms. HANEY. No.

Mr. STABLEIN. No.

Mr. MOHSENI. No.

Mr. KOKAJKO. No.

Ms. KOTRA. No.

Mr. BARTON. So you are all hired based on merit and you can be fired based on merit according to whatever the protocol is on review, is that correct?

Ms. KOTRA. That is correct.

Mr. BARTON. Who is the highest ranking person here?

Ms. HANEY. I am.

Mr. BARTON. And you are a—

Ms. HANEY. I am a Senior Executive Service Office Director.

Mr. BARTON. You are an Office Director?

Ms. HANEY. Correct.

Mr. BARTON. Who is the next highest?

Mr. KOKAJKO. That would be me.

Mr. BARTON. And what are you, sir?

Mr. KOKAJKO. I am a Senior Executive Service Member. I am currently the Acting Director for the Office, Acting Deputy Director for the Office.

Mr. BARTON. So you report to Ms. Haney?

Mr. KOKAJKO. Yes, I do.

Mr. BARTON. Who is next?

Mr. MOHSENI. I am next. I am an SES member as well, and I am the Acting Division Director, permanently as a Deputy Division Director.

Mr. BARTON. Are you equivalent to Dr. Kokajko?

Mr. MOHSENI. Dr. Kokajko would be my Division Director regularly, but he has moved to an Acting Deputy Director due to the Japanese event. And I have backfield behind him as the Acting Division Director. I report to him generally in the division.

Mr. BARTON. You report to him and he reports to her?

Mr. MOHSENI. He reports to Cathy.

Mr. BARTON. What about you, sir?

Mr. STABLEIN. I am a grade 15 Branch Chief. That is non-SES, and I report directly to Mr. Mohseni.

Mr. BARTON. So it is just kind of going right up. And then you are the low lady on the totem pole?

Ms. KOTRA. I most certainly am. I am a grade 15 Senior Staff. I report to Dr. Stablein, and I have no one reporting to me.

Mr. BARTON. Ms. Haney, who do you report to?

Ms. HANEY. I report to the Deputy Director of Operations, Michael Weber.

Mr. BARTON. And who does he report to?

Ms. HANEY. To the Executive Director of Operations which is Bill Borchardt.

Mr. BARTON. And who does he report to?

Ms. HANEY. At that point, you move onto the Commission level and he reports to them.

Mr. BARTON. So you are two levels below the Commission?

Ms. HANEY. Yes.

Mr. BARTON. So you would normally, even at your level, you have no day-to-day interaction with the Commission staff?

Ms. HANEY. On a day-to-day—

Mr. BARTON. With a Commissioner?

Ms. HANEY. With a Commissioner? Typically on a frequency of once to every other month I meet on a one-on-one basis with a Commissioner or with the Chairman.

Mr. BARTON. Does everybody here consider yourself to be outside politics? I mean, you are professionals. Whatever the job is, you do it, and you let the presidentially appointed Commissioners and their political appointees handle the politics. Is that a fair statement?

Ms. HANEY. Yes?

Mr. BARTON. Everybody agrees?

Ms. KOTRA. Yes.

Mr. BARTON. Mr. Mohseni, we have a document that is listed not for public disclosure that was sent from you to Ms. Haney. It is apparently now going to be in the public record. Is that with or without your permission?

Mr. MOHSENI. I did not release it myself.

Mr. BARTON. So it is without your permission?

Mr. MOHSENI. Yes.

Mr. BARTON. And it is sent to you, Ms. Haney, so I assume it has been released without your permission?

Ms. HANEY. Correct.

Mr. BARTON. OK. Mr. Mohseni, this is a pretty, to me, an unusual document.

Mr. SHIMKUS. If the gentleman will yield for a second? It is Tab 6 in the document binder that we submitted into the record.

Mr. BARTON. You disagree with the decision not to approve the Technical Evaluation Report as written for publication. I also disagree with the need to revise the TER which is Technical Evaluation Report. Did you feel when you wrote this that this might have some negative consequences on you?

Mr. MOHSENI. Me?

Mr. BARTON. Yes, sir.

Mr. MOHSENI. Yes, I did.

Mr. BARTON. OK. And when you received it, Ms. Haney, did you feel like that you needed to respond fairly emphatically or that you would be put under some pressure from higher-ups?

Ms. HANEY. No.

Mr. BARTON. You felt no pressure?

Ms. HANEY. The pressure is coming from I have a desire to have the Technical Evaluation Report released to the public. So the pressure comes from an internal desire to make that document publicly available, and as written, I was not comfortable with it being released to the public. So the pressure comes with regards to the document, not with regards to any of the content of the memo.

Mr. BARTON. My 5 minutes is already expired. Let me ask one final question. Do you all feel like the Chairman at NRC is acting appropriately within the statute with what he has done to try to shut Yucca Mountain down? That is a straight question.

Mr. MOHSENI. I do not agree with his decision of bypassing the rest of the Commission and making this decision as a policy decision where the entire Commission would have actually vetted this

decision, this important decision. The reasons I have that the law has not changed——

Mr. BARTON. We don't have time for your reasons.

Mr. MOHSENI. OK. Well, I disagree with the Chairman's decision to move——

Mr. BARTON. Ms. Haney, do you——

Ms. HANEY. I believe he is within his legal authority to make the decisions he has made.

Mr. BARTON. Without the other Commissioners' approval? You think the Chairman himself has that authority?

Ms. HANEY. Based on the knowledge and the reasons that he has provided for making that decision, yes.

Mr. BARTON. What about you, Mr. Kokajko?

Mr. KOKAJKO. No, sir. I disagree with the Chairman on this. I would have preferred that the NRC implement its internal processes which are available to make this decision. I think it is of profound national significance, and it should have been done much more openly and——

Mr. BARTON. Dr. Stablein, what is your position?

Mr. STABLEIN. I also believe that the entire Commission should have had the opportunity to weigh in on such a major decision, and in fact, the IG report indicates had they weighed in, the decision would have come out differently.

Mr. BARTON. OK, and Dr. Kotra?

Ms. KOTRA. Earlier in my career, I served on the staff of two Commissioners and did a rotation for a third, and in all my experience working for political appointees in the NRC, I have never seen a policy decision of this magnitude handled in this manner. I disagree with this decision treated unilaterally by a Chairman. It should have been a Commission decision.

Mr. BARTON. Thank you, Mr. Chairman, and thank you for the courtesy of letting me go over 2 minutes.

Mr. SHIMKUS. The Chair now recognizes the chairman emeritus, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I would like to discuss some of the allegations raised in the witness testimony against Chairman Jaczko and senior managers at the NRC.

Mr. Mohseni alleges in his statement that, "senior managers contributed to the manipulation of the budget process to apparently make sure that the Yucca Mountain project would be left unfunded." Mr. Stablein called Chairman Jaczko's decision to terminate the licensing review process, "the arbitrary decision of one individual." These statements appear to leave out important players in this ongoing saga.

In February of last year, the Obama administration announced that it planned to shut down the Yucca Mountain project. Not long after that, Secretary of Energy asked to withdraw the Yucca Mountain license application from NRC review. Ms. Haney, is that correct?

Ms. HANEY. Yes.

Mr. WAXMAN. In 2010, the NRC approved its budget justification for fiscal year 2011 stating that it would use its funding to begin an orderly closure of the Yucca Mountain licensing activities. For fiscal year 2012, NRC requested \$4 million to terminate the licens-

ing review. The Commission approved that budget request as well. Ms. Haney, is that your understanding?

Ms. HANEY. Yes.

Mr. WAXMAN. In addition, after the Chairman told the staff to close out the Yucca Mountain licensing review last fall, Commissioner Ostendorff called a vote to direct staff to proceed with the license review and finish the Safety Evaluation Reports. That vote failed when a majority of Commissioners opted not to participate. Ms. Haney, is that your understanding?

Ms. HANEY. Yes.

Mr. WAXMAN. And Congress has weighed in as well. In April, Congress passed a continuing resolution that zeroed out funding for Yucca Mountain at DOE and allocated \$10 million to NRC to close out the license review. I would note that both Chairman Shimkus and Chairman Upton voted for the CR and did not offer or even file an amendment to restore funding for Yucca Mountain. Despite the record, Mr. Mohseni alleges in his testimony that there is a conspiracy among senior management at NRC to do the political bidding of Chairman Jaczko. So I will ask the question. Ms. Haney, has the Chairman or his staff ever directed you or asked you to direct staff to change or suppress technical findings on Yucca Mountain?

Ms. HANEY. The Chairman has never asked that.

Mr. WAXMAN. Thank you. I can understand why many of you are frustrated and upset by the end of this program after 4 years of hard work. While some may disagree with Chairman Jaczko's decision to close down Yucca Mountain licensing review, it was hardly an arbitrary decision. The Commission and Congress voted on several occasions to move forwards with the closure, it wasn't the Chairman alone. It was the Secretary of Energy and the President of the United States and the Congress of the United States that decided to end the Yucca Mountain project, and that is where we stand at the moment.

Mr. SHIMKUS. Will the gentleman yield just for one second, just to follow up on a question?

Mr. WAXMAN. Yes.

Mr. SHIMKUS. The question you asked Ms. Haney, and she is under oath, the question that you asked, did the Chairman or staff. Her response was, the Chairman did not. Can she answer the question whether staff had ever given her direction? I mean, that is what your question was, to Chairman and staff. Ms. Haney, your response was, and you are under oath, your response was the Chairman has not.

Ms. HANEY. Nor has the staff.

Mr. SHIMKUS. OK. Thank you.

Ms. HANEY. But if given the opportunity with regards to—I am interpreting suppress to be to change technical findings, we did receive direction from the Chairman with regards to when we would issue technical documents as noted in Dr. Stablein's testimony. But am I answering that the Chairman or the staff did not give me. That is my interpretation of suppression, that he did not suppress technical information.

Mr. WAXMAN. But he did ask you or his staff asked you to do what?

Ms. HANEY. With regards to the timing of the Safety Evaluation Report being issued at the times we had told the Board that we would issue them, and my reference is back to Dr. Stablein's testimony.

Mr. WAXMAN. And is that something unusual for the Chairman to talk about the timing and direct the timing of release of certain—

Ms. HANEY. It is unusual, but again, I believe it is consistent with the authorities that he has as Chairman.

Mr. WAXMAN. Thank you very much. I yield back my time, Mr. Chairman.

Mr. SHIMKUS. Thank you, Mr. Waxman, for letting me intervene. The Chair now recognizes the vice chair, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Mr. Mohseni, I read the Inspector General's report, and it seems that some NRC executives anticipated that during the continuing resolution in the fall of 2010 your department would continue its work on Yucca and the Safety Evaluation Report. Allow me to read it for you. "The Deputy Executive Director wanted to convey in the CR budget guidance memorandum that the staff would use FY 2010 carryover funds in fiscal year 2011 to move ahead with license application review activities until they had a final decision from the Commission. This was a language the Deputy Executive Director originally inserted into early draft versions of the CR budget guidance memorandum." Meaning there was money left over. I repeat, there was money left over to continue with the Safety Evaluation Report and review of the Department of Energy application while the Commissioners deliberated on whether to uphold or vacate the Atomic Safety and Licensing Board decision. This language was ultimately removed. Is that correct?

Mr. MOHSENI. That is correct.

Mr. MURPHY. Is it your opinion that Chairman Jaczko directed the removal of this language?

Mr. MOHSENI. I don't know personally for sure, but circumstantial evidence suggests that.

Mr. MURPHY. Is it your opinion that by removing that language, the Chairman was undermining the Agency's independent work at Yucca?

Mr. MOHSENI. There is a connection there to be made.

Mr. MURPHY. Mr. Mohseni, the Director, Catherine Haney here, has testified that on October 1, 2010, while the NRC, like all government agencies, was operating under a continuing resolution, the Department began to convert the remaining volumes of the Safety Evaluation Report into a technical advisory document devoid of scientific findings. Is there a difference between a safety evaluation report and technical evaluation report in terms of what they mean for policymakers? Is there a difference in content?

Mr. MOHSENI. There is.

Mr. MURPHY. All right. Is it true that a technical evaluation report would lack scientific findings and conclusions reached by the Department in your work?

Mr. MOHSENI. The Safety Evaluation Report would have regulatory compliance findings. It would also have a technical assess-

ment. The technical evaluation report would just have the technical assessment without the regulatory compliance.

Mr. MURPHY. So if you were directed to do one and not the other, there would be a distinct difference in content between the two documents, am I correct?

Mr. MOHSENI. Yes.

Mr. MURPHY. And it is possible that the safety evaluation report could contain information that would validate Yucca and dispel safety concerns, am I correct?

Mr. MOHSENI. Correct.

Mr. MURPHY. So if you were told not to do a safety evaluation report but to do a technical evaluation report, there would be direct suppression of data, am I correct?

Mr. MOHSENI. Yes, from a licensing standpoint, the ultimate decision for the Nation was whether or not it meets the regulation. So that piece of information would not be available.

Mr. MURPHY. So is it your opinion that the Chairman of the NRC specifically directed the staff in your department to delay publication of a Safety Evaluation Report until after he published a budget memorandum that would end your department's work? Am I correct in that?

Mr. MOHSENI. Let me just rephrase that, if you don't mind.

Mr. MURPHY. Real quick. I have a whole bunch of questions.

Mr. MOHSENI. Yes, the Safety Evaluation Report is tied to our litigation process, and the timing of release of that would have been consistent with what we had announced to the board. And the intervention by the Chairman put us off course.

Mr. MURPHY. Mr. Mohseni, you recently appealed to the full Commission to intervene in connection with your concerns about manipulation and suppression of staff information. This is what we have in Tab 7 there, what appears to be a copy of that petition. That is what you filed?

Mr. MOHSENI. Yes, sir.

Mr. MURPHY. What led you to do this, real quick?

Mr. MOHSENI. The Technical Evaluation Report was complete March 31 as we had announced, and I was the final signatory on it. And we provided it to the front office, and 2 months later we got the direction that I think you heard the witnesses here that we were not authorized to release it unless it was revised.

Mr. MURPHY. You wrote in this document, "In this division alone I have witnessed the suppression and manipulation of programmatic and budgetary information to meet a politicized agenda." Is it your belief that this direction came from Mr. Jaczko?

Mr. MOHSENI. Although I don't have direct evidence, but it seems like it is the same agenda.

Mr. MURPHY. All right. In your testimony you referenced the political pressures, manipulation of our scientific and licensing process that would come with the appointment of Chairman Jaczko. Do you believe the source of problems of the Agency today stemmed from Chairman Jaczko's behavior and actions?

Mr. MOHSENI. The source might be there, but he couldn't do it alone if there were not enablers.

Mr. MURPHY. I am a psychologist. I am familiar with enabling. I would like to read to you a couple statement from his speech and

see if you are in agreement with this. This is regarding the mission statement of NRC. The NRC must foster initiatives that seek to further the culture within our own staff by encouraging programs such as differing professional opinions. Would you agree with that?

Mr. MOHSENI. Yes, sir.

Mr. MURPHY. Do you think that culture exists in this situation?

Mr. MOHSENI. I have tested it, and so far I am still sitting here before you, so——

Mr. MURPHY. All right. But the culture of being allowed to have these professional opinions coming to an official NRC report seems to be tainted. How about this one?

Mr. MOHSENI. Yes.

Mr. MURPHY. How about this one, too, the process of the Commission uses to make policy decisions should always be open, accessible and well-understood by all. But the law as Congress has passed, the President signed into law, it says the Chairman and the Executive Director of Operations to the Chairman, shall be responsible for ensuring the Commission is fully and currently informed about matters within its functions. Yet, it appears by directing the report to be done in one way and not the other, it seemed to be in violation of that law. Would you agree?

Mr. MOHSENI. Yes, I agree.

Mr. MURPHY. One more statement, Mr. Chairman. Would it surprise you those quotes I read you were made by Mr. Jaczko himself in 2005?

Mr. MOHSENI. Yes.

Mr. MURPHY. I would like to submit this for the record, Mr. Chairman.

Mr. SHIMKUS. Is there objection? Hearing none, so ordered.

[The information follows:]



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"GUIDING PRINCIPLES: CULTURE, TRANSPARENCY, AND COMMUNICATION"

Prepared Remarks by

The Honorable Gregory B. Jaczko
Commissioner
U.S. Nuclear Regulatory Commission

before the

Regulatory Information Conference
Washington, DC
March 9, 2005

Introduction

My fellow Commissioners, distinguished members of the public, stakeholder organizations, NRC staff, the media and our foreign guests, it is an honor for me to join you for the first time at the Regulatory Information Conference.

I would like to talk today about how I intend to execute my duties as a Commissioner of the Nuclear Regulatory Commission. I intend to be fair and open-minded, to rely on my knowledge of science and public policy, and to consider a triangle of three core guiding principles that are rooted in the mission statement of the NRC – a safety and security culture, transparency and communication.

But before I go into detail about my approach to the job, there is an important issue I need to address. I would like to publicly express my deep disappointment with many of the newspaper articles written about me over the last few years as I was considered for nomination to the Commission. I was deeply disturbed by them, and I will tell you why. They never, ever, provided you with an accurate description of how to say my name. So, for the record, it is pronounced "Yatsko."

Now that we have gotten that important issue out of the way, let me talk about how I intend to do my job.

I look forward to continuing to build productive and collaborative relationships with the industry and stakeholder groups represented here. With respect to the industry, the benefits you provide to our society in terms of energy self-sufficiency, safety, and technological innovation are numerous. I intend to work with you to ensure that the NRC's regulations continue to efficiently promote the safety and security of your nuclear facilities. The role that public interest groups and state and local governments play is also crucial – you represent the wishes of the American people by ensuring the safe, secure and reliable use of nuclear materials. I look forward to hearing your views on the issues facing the NRC and ensuring that your concerns receive the attention they deserve.

And last – but certainly not least – I am honored to be here with the NRC staff. After 6 weeks of working side-by-side with you at headquarters and out in the regions, I am impressed by your expertise, dedication and devotion to the vital mission of our agency. The fact that most of the employees I have met have been with the agency for many years shows the commitment you have. Your activities really are the glue that holds the entire regulatory framework together. I will work to foster a sense of trust and openness between you and your Commission that will ensure the NRC can continue to be a world-class organization.

From a public policy perspective, the nuclear industry is a great example of an arena in which democratic and free market values intersect. The interaction between the public, licensees, and all levels of government that has resulted in the safe, secure, efficient, and beneficial use of radioactive materials is an example of how our system of government is the best that society has yet been able to develop.

Mission Statement

The NRC's role in this process is clearly defined in our mission statement that has evolved out of decades of guidance from Congress. Let me remind you of what that mission statement is:

“The mission of the NRC is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment.”

I believe this is a concise and powerful statement. Our challenge is to unpack and decipher it into a concise regulatory framework.

This is analogous to the task that I faced as a physicist working to understand fundamental physical theories. Specifically, I focused on a basic theory that describes one of the four fundamental forces in nature. This theory goes by the exotic name – quantum chromodynamics – which seeks to explain the forces that hold the nucleus of an atom together. Our understanding of the forces that bind the particles in the nucleus can be expressed in a straightforward manner with an equation that is as simple and elegant as the NRC's mission statement. But just as with the theory of quantum chromodynamics, when it comes to uncovering the practical meaning of the NRC's mission statement and applying it to regulatory policy, the devil is in the details. As with any good theory, it is crucial to understand the physical reality which it seeks to describe.

Before I explain my understanding of the NRC mission statement, I want to describe my recent visit to several nuclear facilities where I obtained practical exposure to the physical infrastructure that is the basis for our nation's nuclear industry. This past week I had the pleasure of traveling with Commissioner Lyons to the Sequoyah and Browns Ferry nuclear facilities. It was not only an informative trip, but it provided us with an opportunity to do what few others are able to do - take a tour of portions of a nuclear facility that are usually inaccessible.

The recovery of Unit 1 at Browns Ferry involves an impressive undertaking with 2,400 personnel performing demolition, reconstruction, and refurbishment activities. Due to the extensive nature of the reconstruction, we were able to physically enter the dry-well. And, with the dry-well head removed, we were able to look down into the reactor vessel. R.G. Jones, the Unit 1 restart manager with more than 30 years of operational experience, was nice enough to show us around. Near the end of our tour he asked if we wanted to see the torus in this boiling water reactor. We agreed enthusiastically.

Of course, when he asked if we wanted to see the torus four flights down, he neglected to remind us that we would have to then walk all the way back up! We worked up an quite appetite just before lunch. But for R.G.'s sake, I'll admit that the exercise was well worth it.

I relay this story, because it demonstrates the importance of understanding the facilities we regulate. You really can not conceive of what a 15 foot diameter pipe looks like until you can see it up close. The chance to see these parts of a reactor was a unique opportunity and certainly provides me with a better understanding and visualization of some of the most unreachable sites of the physical plants and facilities we regulate. This experience allowed me to see in the flesh what I have known and studied in the abstract. It is the place where - through the ingenuity of engineers - the theoretical yields to the practical.

Of course, when we regulate we have to consider *both* the theoretical and the practical. And so I would like to turn to a discussion of what I believe is a triangle of three interconnected guiding principles that provide the direction we need to effectively implement the NRC's mission. The three segments of this triangle are:

1. Instilling a safety and security culture;
2. Transparency;
3. Communication.

These three principles are central to how I conduct myself, how I manage my office, and how I believe the agency functions as an effective, responsive, and efficient regulator.

Safety and Security Culture

Let me begin with a discussion of the first leg of this triangle - instilling a culture of safety and security. Note that I have expanded on the familiar philosophy of "safety culture" to include security. I do not believe that we can continue considering these as independent concepts but should strive for an integrated safety and security culture. There is perhaps no more important element of effective regulation and operation of nuclear facilities than achieving this environment.

One can generally find evidence of a deteriorating safety and security culture at facilities that have experienced problems. As Chairman Diaz discussed in his address to you last year, one of the biggest challenges in this arena is complacency, and unfortunately, complacency is most likely to be recognized only after it seeps in and contributes to a degraded safety and security environment. We must do more to develop the performance measures that identify weaknesses in the safety and security culture and promote strengths in culture before problems emerge.

And there are elements of this work that both the NRC and stakeholders must foster. The licensees should continue to work to recognize the competing cultures at each facility and bring them together around this common goal. The Institute for Nuclear Power Operations has initiatives underway to achieve this goal and I applaud their efforts in this area. The NRC also must foster initiatives that seek to further this culture within our own staff by encouraging programs such as differing professional opinions. And stakeholders must assist in the development of this culture by offering constructive and informed advice and expertise.

The more the NRC, the stakeholders and the licensees operate in a common safety and security culture the more consistent and less intrusive our regulations will be. When it comes down to it, both safety and security rest on the foundation of a unified culture – from the operator who consistently trains and learns, to the NRC inspector who identifies a potential problem, to the security guard who stops a suspicious vehicle.

Transparency

I would now like to address the second guiding principle I believe should infuse our decision-making as a Commission – transparency. I believe that both openness and transparency are important but I draw a distinction between the two.

I see openness as the effort to provide accurate and honest information. This has been a vital focus of the NRC at least as far back as the early 1990s, with Chairman Ivan Selin's belief that the NRC should increase its "efforts to reach out to the public at large, to recognize how important public credibility is to the achievement of its regulatory goals." I believe that is just as true today as it was then.

But I also believe that we need to renew our focus on transparency, which I define as ensuring the *processes* we use to make decisions are readily understood. In a post-September 11th world, we can not always fully achieve our goal of openness, but we can always be transparent as an agency – both to the public and to the licensees.

In other words, while specific pieces of information may need to be protected for the NRC to accomplish its public safety and security mission, the *process* the Commission uses to make policy decisions should always be open, accessible, and well understood by all.

The agency has made great strides in the area of transparency, most recently in the process it established to handle nuclear reactor license renewals, but we need to anticipate new challenges that may require creative ways of ensuring we can be faithful to this principle. For example, we should provide staff with the technological tools and support they need to enable other programs to be as transparent as the license renewal effort has been.

Communication

There is a third and final guiding principle I believe is necessary to achieve our mission. Even if we successfully promote a safety and security culture and are transparent about our decision making processes, we must be able to effectively *communicate* these actions. Communication involves its own triangle of three important elements – the public, the industry, and the NRC. You may see a theme developing here...

Effective communication means open channels between each of these entities:

- It means we listen to the public and explain our actions clearly.
- It means we listen to the industry and explain our actions clearly.
- And it means the industry and public must listen to each other and explain their actions clearly as well.

From the NRC's perspective, we have a responsibility to communicate both with licensees and the public. To the licensees we must clearly communicate our processes, intentions, and resource challenges. They deserve this clear communication as we move forward with license renewals, design certifications, and potential applications for new licenses. And to the public we must make the scientific and technical aspects of our work as accessible as we can. The public deserves clear and comprehensible information because they are the entity we serve as clearly defined in our mission statement.

Our agency has also done a lot in this arena. We have published thousands of documents online, developed a good Web site, and held public forums. But we can always do more to explain our efforts in a manner that everyone can easily understand.

In my office I have instituted something I call "The Parent's Law." It goes pretty much like this: We must ensure that we communicate everything we do to achieve our mission in a language my Mom and Dad can easily understand. At the heart of this renowned and well-known law of science is "clarity and simplicity."

I propose that the entire agency should adopt "The Parent's Law". So if any of the NRC staffers in the audience don't have my parent's phone number and need to make sure they are acting in accordance with this law, please see me after the speech.

On a more serious note, I believe that not only does a clear and simple approach increase the public's level of confidence in our activities, it ensures they are more likely to trust us and the important information we provide.

Finally, members of the public – Mom and Dad themselves, if you will – can also contribute to this effort. Citizens all over the country – not just those who are currently involved with the energy sector – should invest time and effort to learn more about the benefits and challenges of nuclear technology. An informed citizenry will be better able to participate in the deliberations as we move forward to the next set of big decisions the NRC and the country will face regarding the direction of our nation's energy sector.

I have spoken today about taking a clear and concise mission statement and considering its practical application in light of three guiding principles. The thing that these principles have in common is that none of them can be easily translated into solving the technological challenges we face in areas such as fire protection or emergency core cooling systems. Yet, the outcomes we achieve in resolving these issues will not be effective without a clear focus on building and reinforcing these principles into our organization.

An example of how I see these interlocking principles affecting policymaking can be found in the discussion of how open the NRC is with information. I believe the NRC should be as open as possible. We have to restrict information when doing so is necessary for security reasons to achieve our mission of protecting the public health and safety. But by achieving a common focus on **safety and security culture** the public will be reassured that these actions are taken to achieve our mission statement. When we find it necessary to do this, the process we use to arrive at this decision should be **transparent**. And finally we should clearly **communicate** to the public and licensees in plain language what we are doing and why.

Conclusion

Which brings us back to the idea of a triangle of the interconnected principles of instilling a safety and security culture, transparency and communication. I think that if we can meet these three goals on any issue we face, we will be effective regulators. After all, any engineer will tell you that the perfect triangle is one of the strongest shapes in structural design.

Therefore, as I begin my job as an NRC Commissioner, I pledge to you to consider the complex policy issues that come before us based on my scientific and public policy background, the guiding principles I have outlined here, and an awareness of the direct impact the decisions I make have in our communities and on our licensees.

I look forward to getting to know you all in the weeks and months ahead and to working collaboratively with you to achieve the goals of our agency and our nation.

Thank you and I would welcome any questions you may have.

Mr. SHIMKUS. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman. Mr. Mohseni, to continue, you state your belief that "At the direction of the Chairman and with the aid of some senior managers, the disclosure to the rest of the Commission of the staff's views on the impacts of budget cuts and allocations was suppressed." What were these views briefly?

Mr. MOHSENI. We had prepared responses to inquiries by individual Commissioners and by inquiries from Members of Congress. And we the staff were the first people to actually try to address those questions. As they were sent up through the chain, it had to be cleared at the Chairman's office, and then the answers that went out were quite different than the ones we had forwarded.

Mr. PITTS. Mr. Mohseni, why would the Chairman and certain senior managers seek to silence the staff's views on the impacts of budget cuts and allocations?

Mr. MOHSENI. In retrospect, after the IG report, I can actually say that it is very clear that, in fact, to keep the others in the dark so that the decision would not be hampered to shut down the program.

Mr. PITTS. Isn't it true that keeping the full Commission fully and currently informed is a statutory requirement?

Mr. MOHSENI. It is indeed.

Mr. PITTS. Why is it important that the full Commission have an opportunity to hear the views of its dedicated and most experienced professional staff?

Mr. MOHSENI. Because the Commission's policy-making body heavily relies on the best information available to them to make policy. Once the staff deprives the full Commission of getting the full benefit of the thinking of the staff in terms of the options that the Commission has and the recommendation from the staff, it undermines the functionality of the Commission, and you will at best come up with an inadequate policy because you did not support with full information the integrity of the process by providing them with the best advice possible.

Mr. PITTS. Dr. Kotra and Dr. Stablein, Mr. Mohseni, if you will each respond, to what extent does NRC senior leadership contribute to problems of keeping information fully and currently from the Commission? And if you can provide a specific example of this happening to you with regard to providing information to the Commission about Yucca Mountain?

Ms. KOTRA. Well, to the extent that I am given assignments to draft information that is going to go forward to the Commission, I have to satisfy the concurrence chain that goes up through my management. And ordinarily, there is a chain that starts at the bottom and goes to the top. The regular procedure that I had to follow in the memo that we have discussed here today was coming directly from the Deputy Director of Operations reaching down to my level and making changes in the draft that would be seen by multiple layers above me is now how it is supposed to work. Basically, the draft that was supposed to go through the concurrence chain in an orderly progression was not allowed to happen. There were over 100 different electronic drafts that were entered into our electronic recordkeeping system before this memo went forward to the

Commission, and much of that was to incorporate changes that were provided, I am told, you know, through this iterative process, and I don't know this directly, but it was through meetings that my office director had with the Deputy Director for Operations, and I could only surmise that this direction was coming from the Chairman's office.

Mr. PITTS. The chair emeritus wants to——

Mr. BARTON. The Deputy Director of Operations reports to the Director of Operations who I assume reports to the Chairman?

Ms. KOTRA. That is correct.

Mr. BARTON. Or to the Commission?

Ms. KOTRA. That is correct.

Mr. BARTON. At those two levels, are those political appointees or are they civil service?

Ms. KOTRA. They are career civil servants, but they report directly to the Chairman.

Mr. BARTON. OK. Thank you.

Mr. PITTS. Dr. Stablein, would you respond?

Mr. STABLEIN. The best example that I have is also this memo that Dr. Kotra worked on because as her supervisor, I agonized with her over these changes we were forced to make.

Mr. PITTS. Thank you. Mr. Mohseni, would you respond?

Mr. MOHSENI. Same.

Mr. PITTS. All right. Ms. Haney, you supervise the other panelists appearing here today, right?

Ms. HANEY. Yes.

Mr. PITTS. How do you respond to the concerns expressed by these senior NRC staff that the Commission is not getting full information?

Ms. HANEY. To the best of my knowledge, I believe the Commission was getting the information. Now after the IG report is out, there are things that would call that into question. But at the time we were working on that memo and I was the one that was directing the content of the memo with input from the Deputy Director of Operations, I felt the Commission was aware based on my periodic meetings with the Commissioners.

Mr. PITTS. Well, knowing what you know as Director and knowing what the Commission does not know, do you think all policy and budget matters concerning the Yucca license activity have adequately been communicated to the Commission?

Ms. HANEY. I do believe that.

Mr. PITTS. What is the reaction of the other three of you?

Ms. KOTRA. I find that hard to believe.

Mr. MOHSENI. I specifically asked that question yesterday of at least one Commissioner, and I previously asked the others. The answer was no, we have not.

Mr. PITTS. Dr. Stablein?

Mr. STABLEIN. Yes, I agree with what Mr. Mohseni said.

Mr. PITTS. My time is up.

Mr. SHIMKUS. The gentleman's time is expired. The Chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thank you, Chairman. I appreciate the time and I appreciate the panelists here today, and every one of these hear-

ings I set through, I can't say that I am not even more amazed of what is going on out there.

As the chairman has stated about a dysfunctional Commission and hearing what the Inspector General is saying and saying that the Chairman is not forthcoming in the information to his fellow Commissioners is just beyond belief.

But if I could, Mr. Mohseni, if I could ask you this, what is the technical evaluation report for post-closure safety?

Mr. MOHSENI. It is the staff's collection of learning that has contributed to our original Safety Evaluation Report minus the regulatory compliance findings. So it has, I don't know, 400 or 500 pages of serious technical assessment of the performance of the mountain once it is closed. It is the post-closure, 1-million-year assessment of its performance as proposed by the Department of Energy.

Mr. LATTA. OK. And according to the February 4 memo to the Commission, was the document to be released on March the 31st? Was the document to be released by March 31?

Mr. MOHSENI. It had to be completed by March 31 and probably within days to be released, yes.

Mr. LATTA. OK, and was the TER manage group completed by March 31?

Mr. MOHSENI. The staff completed it, yes.

Mr. LATTA. OK. And also, in one of your memos that you had sent on June the 3rd, you stated that this was not a draft, it was final and it was completed on or around the 31st. Do you still stand by that, that it was—

Mr. MOHSENI. Yes, sir. Yes, sir.

Mr. LATTA. And also, are you the signing official on that document, then?

Mr. MOHSENI. Yes, as Acting Division Director, I signed. I am the final signatory on that document.

Mr. LATTA. Let me ask you this. Director Haney had mentioned that she believed that the Commission was getting the information, but in looking at some of these documents that we have received, one dated on June the 20th that you had sent to all the Commissioners, a request for Commission intervention, why did you send that?

Mr. MOHSENI. This was the final straw for me. I had observed the testimony of the individual Commissioners in response to the IG report, and then this event about the TER occurred. And I could not give the benefit of the doubt anymore to the senior management above me to actually perform what we were supposed to be performing. And I thought this still smelled like even after the IG report is out, we still have not learned the lesson of actually maintaining a level of integrity in the process.

Mr. LATTA. OK.

Mr. MOHSENI. I thought the process is—

Mr. LATTA. I am not sure about the date on this one. I have two memos here. You have one addressed to the Commission, to each Commissioner by name. But in the second paragraph it says—is this the enclosure then? Within it it says on June the 6th I was informed that additional redactions be needed to release the TER. I respectfully disagreed with the decision not to release the TER

as written and approved for the publication and public distribution. I also disagreed with the need to revise the TER. Attached is my email fully explaining my basis for challenging this policy decision.

Did you get any response back from anybody on the Commission?

Mr. MOHSENI. Not from the Commission, but I think Ms. Haney can address that. We have had—the EDO responds at least, you know, on short notice on a list of actions that the EDO is taking on that memo. We are still awaiting Commission decision on it.

Mr. LATTA. OK. Let me go on with the February the 4th memo with the TER. According to that memo, the TER was going to contain no staff findings of a regulatory compliance, is that correct?

Mr. MOHSENI. That is correct.

Mr. LATTA. OK. Are there staff findings about the regulatory compliance in that document?

Mr. MOHSENI. No.

Mr. LATTA. And did the Office of the General Counsel object to the TER or express any concerns about the document as it was written?

Mr. MOHSENI. No, they did not.

Mr. LATTA. But even without regulatory findings, this is an important scientific document reflecting the judgment and analysis of the NRC technical and scientific staff. Is that correct?

Mr. MOHSENI. That is correct.

Mr. LATTA. And I would also assume that any efforts to edit the scientific analysis would be frowned upon by the diligent staff. Would I be wrong in that assumption?

Mr. MOHSENI. No.

Mr. LATTA. Dr. Haney, if I could just ask you, the February the 4th report does not contain any regulatory findings. Why did you not allow the division staff to release the TER?

Ms. HANEY. Because when I looked at the Technical Evaluation Report and compared it to the Safety Evaluation Report, I felt that there were similarities between the two documents and that it actually did contain the findings. So I asked for some minor changes, and I would emphasize they were minor changes to further separate the documents.

Mr. LATTA. OK. Isn't it true that the TER specifically states that it does not include conclusions as to whether or not the DOE satisfies the Commission's regulations in the TER?

Ms. HANEY. That was the intent of the document, but I felt there were statements in there that were too similar to the Safety Evaluation Report, and you could make a conclusion based on staff's technical findings.

Mr. LATTA. OK. Are there specific conclusions about whether the DOE license application for Yucca Mountain complies with the NRC safety regulations in the document?

Ms. HANEY. There is not a direct tie in the Technical Evaluation Report to the regulations. However, there is a tie to the Yucca Mountain Review Plan that is a Commission-approved document.

Mr. LATTA. Let me ask this. I just want to make sure I heard it correctly. When you were sending information up the chain, as you might say, did you believe this Commission was getting all the information, all the Commission members?

Ms. HANEY. At the time, prior to the IG's report coming out, my answer would have been yes. But based on the IG report now, I would have to change that opinion.

Mr. LATTA. So you would change it to—what would your opinion be then?

Ms. HANEY. It appears that they were not getting some of the information that I thought that they had been getting.

Mr. LATTA. Thank you very much, Mr. Chairman. I yield back.

Mr. SHIMKUS. The gentleman yields back. The Chair recognizes the gentleman from Colorado for 5 minutes.

Mr. GARDNER. I thank you, Mr. Chairman, for the hearing today and thank you to the witnesses as well for your time in discussion today.

Dr. Stablein, what is the significance of SER Volume 3 in your opinion?

Mr. STABLEIN. The significance of the Safety Evaluation Report, Volume 3, is it provides the staff's regulatory findings versus the part 63 requirements for performance of the repository in the million years after it is closed up.

Mr. GARDNER. And what is the status of the document when Chairman Jaczko directed you to terminate review?

Mr. STABLEIN. It was very near being ready to be issued.

Mr. GARDNER. Very near? Would it have taken much effort to finish it?

Mr. STABLEIN. No. In terms of resources, really very little resource to finish.

Mr. GARDNER. So finish relatively easy then?

Mr. STABLEIN. Yes.

Mr. GARDNER. OK. Mr. Mohseni, according to your email exchange with Ms. Haney, which I believe is in Tab 6, page 2, Item 8 of what you have in front of you, you say the SER Volume 3 is complete in content with the Office of General Counsel's no legal objection and no open issues. Is that correct?

Mr. MOHSENI. Yes.

Mr. GARDNER. When was the SER 3 completed with the Office of General Counsel offering no legal objection to the full content?

Mr. MOHSENI. Perhaps the latter part of the year 2010.

Mr. GARDNER. So it was completed with the Office of General Counsel you believe the latter part of the year 2010?

Mr. MOHSENI. Yes, latter part of 2010, and we developed a reversible package, not the SER. To get to a TER, we had to start from the SER, and the work that went into it, my colleagues later called it a hybrid thing, to go from one document to another. So the terminology, we were not working on an SER anymore, we were working on a TER. But by going through the initial phase, I think we completed the OGC concurrence in that phase.

Mr. GARDNER. OK. And so the document is essentially, save for formatting and copy edits, is that correct?

Mr. MOHSENI. Yes, and of course, the Office Director comments prior to publication, obviously. The signature has to come from the Office Director.

Mr. GARDNER. Until your email, was the Commission made fully and currently aware that the staff had substantially completed SER Volume 3?

Mr. MOHSENI. Yes.

Mr. GARDNER. Yes? OK. And so as far as technical staff is concerned, the SER will not fundamentally change and could be released to the public as of the timeframe you mentioned, correct, to this year?

Mr. MOHSENI. Yes.

Mr. GARDNER. So that is correct. Then what is the basis for saying then that its release is pre-decisional?

Mr. MOHSENI. It is pre-decisional because of the hearing process, pre-decisional because if—first of all, the Office Director has not signed off on it, so therefore, the document is incomplete if you will because that final signature is not on it.

Mr. GARDNER. So is—

Mr. MOHSENI. But it is pre-decisional because of the legal aspects of it, prior to—you know, when we are ready to issue it to the Board, it becomes public.

Mr. GARDNER. So who makes that determination then?

Mr. MOHSENI. That final determination is by our office director.

Mr. GARDNER. OK. All right.

Mr. MOHSENI. The staff has done its work, but the Office Director's signature is necessary. Obviously it is a licensing document, and the NMSS Office Director is in charge of making that final call.

Mr. GARDNER. And so, Ms. Haney, then on what basis are you making this decision that the SER is a draft? We just heard it is complete.

Ms. HANEY. I have not completed my review. A copy with the OGC changes in it has not been presented to me, and I have the direction from the Chairman that the document is not to be issued until our original schedule, which was November.

Mr. GARDNER. So is the Chairman making the decision or are you making the decision?

Ms. HANEY. There are a couple things going on. One is the Chairman's June memo that said the Safety Evaluation Report should be issued on the schedule that we had provided to the Board which was that Volume 3 would have been presented for publication in November of 2010.

Mr. GARDNER. How many of the Commissioners know there is a reversible SER on the shelf right now then?

Ms. HANEY. I think the use of the term reversible SER is rather confusing. On October 1 we began to work on a Technical Evaluation Report. So the Safety Evaluation Report stopped on September 30 of last year. All the Commissioners I believe are aware that staff is working on a Technical Evaluation Report that was being developed using the Safety Evaluation Report as a basis document.

Mr. GARDNER. But in terms of the SER, do you believe you have an obligation to keep the Commission fully and currently informed?

Ms. HANEY. Yes.

Mr. GARDNER. And have you done that?

Ms. HANEY. I believe I have.

Mr. GARDNER. But the Counsel report said that they didn't know certain things.

Ms. HANEY. I know I had numerous conversations, one-on-one conversations with all the Commissioners as well as the Chairman

with regards to the status of the Safety Evaluation Report and the Technical Evaluation Report. I am aware of what the IG report says also.

Mr. GARDNER. And so—I mean, does the Commission provide any guidance to staff on how to handle near-complete SERs?

Ms. HANEY. No.

Mr. GARDNER. Prior to the IG's report you say you thought information was getting through. Now it appears that it wasn't. What information wasn't getting through?

Ms. HANEY. It appears some of the budgeting information.

Mr. GARDNER. It appears though it didn't get through?

Ms. HANEY. Correct.

Mr. GARDNER. And is that something that you should have had a conversation with them about?

Ms. HANEY. Certain elements of the budget I would have conversations with them, but that is not a primary responsibility of my job.

Mr. SHIMKUS. The gentleman——

Ms. HANEY. That would be more of Chief Financial Officer.

Mr. SHIMKUS. The gentleman's time is expired. The Chair recognizes the gentleman from Oklahoma, but before he assumes his time, I just want to clear something up that Mr. Latta has mentioned.

Ms. Haney, you testified that before the IG report, you felt that all the information to the Commissioners were fully informed, and it is my understanding based upon your written and oral testimony from the other four, before the IG report was submitted, you already questioned whether full information was being provided to the Commissioners. Is that correct? And I see the four nodding.

Mr. STABLEIN. Yes.

Mr. KOKAJKO. Yes.

Ms. KOTRA. Yes.

Mr. MOHSENI. Yes, that is correct.

Mr. SHIMKUS. And I want to also highlight that Ms. Haney, you are their supervisor.

Ms. HANEY. Yes.

Mr. SHIMKUS. So if your employees already have a view that the Commissioners aren't fully informed, we have a problem here. And would like to yield 5 minutes to Mr. Sullivan from Oklahoma.

Mr. SULLIVAN. Thank you, Mr. Chairman. Before I start my questions, I just wanted to—Congressman Gardner had a question that I don't think was answered clearly by some of you, and I start with Ms. Haney.

Does the Commission know there is an SER on the shelf with no legal objection, there is one on the shelf with no legal objection? Yes or no.

Ms. HANEY. They are not aware that there is a no-legal objection. They are aware there is an SER on the shelf.

Mr. SULLIVAN. That would be no? You can just——

Ms. HANEY. To answer your full question——

Mr. SULLIVAN [continuing]. Say no.

Ms. HANEY [continuing]. It would be no.

Mr. SULLIVAN. OK. And Mr. Kokajko, could you answer that same question? Does the Commission know there is an SER on the shelf with no legal objection, just sitting there?

Mr. KOKAJKO. I agree, no.

Mr. SULLIVAN. No? And Mr. Mohseni, could you answer that question, please?

Mr. MOHSENI. I should say I don't know. I am now very confused what they do know and what they do not know. It is hard to tell exactly. Some of them may know, some may not.

Mr. SULLIVAN. That sounds like a problem, doesn't it?

Mr. MOHSENI. It is.

Mr. SHIMKUS. If the gentleman would yield for one second?

Mr. SULLIVAN. I yield.

Mr. SHIMKUS. But it is part of the law that the Commissioners have to be fully informed. Is that correct?

Mr. MOHSENI. That is correct.

Mr. SHIMKUS. I yield back.

Mr. SULLIVAN. Thank you, Mr. Chairman. Last week we took testimony from the NRC Inspector General who painted a disturbing picture of the Chairman's behavior and actions. Are you all familiar with this report, yes or no? And I will start with you, Ms. Haney, and go down the line.

Ms. HANEY. Yes.

Mr. KOKAJKO. Yes.

Mr. MOHSENI. Yes.

Mr. STABLEIN. Yes.

Ms. KOTRA. Sadly, yes.

Mr. SULLIVAN. Mr. Mohseni, the IG report found that the Chairman acts as the gatekeeper for information to the Commission and strategically withholds information to manipulate Commission decisions. Are you familiar with that?

Mr. MOHSENI. That is my experience, what I described today, based on—

Mr. SULLIVAN. That would be yes?

Mr. MOHSENI. Yes, absolutely yes.

Mr. SULLIVAN. Mr. Mohseni, aside from the Commission level information problems, what do you see in terms of information control among senior management?

Mr. MOHSENI. I think the senior managers were contributing to suppression of the information.

Mr. SULLIVAN. To what extent does information control and suppression permeate the activities of your division and would you elaborate?

Mr. MOHSENI. Well, one is the famous memo we have been talking about where it should have been a policy decision for the Commission to make, and we should have developed a policy paper, which is the basis for my nonoccurrence on that memorandum. Another one is the TER, another one is the budget. The budget was influenced adversely by management above me. So the information would not get to the entire Commission. Similarly the programmatic impact of the budget or other decisions would not get out because we never developed a policy position to recommend to the Commission for the entire Commission to understand fully the implications of what was going on. So for the past 2 ½ years, the

Commission has never received the full information to my knowledge.

Mr. SULLIVAN. That is amazing. Dr. Kotra, Dr. Stablein and Dr. Kokajko, would you agree with Mr. Mohseni on this? And could you add to his perspective?

Ms. KOTRA. I have served on the staff of two Commissioners. I am well-experienced in both drafting as well as reviewing policy papers for Commissioners. I was fully prepared to draft an options paper and wanted to draft an options paper on this very important issue. It was not an opportunity I was given. I was told to write only a status paper. There were so many policy ramifications that we were trying to sort through, and it was turned into a status paper. Like I said in my testimony, it was with great reluctance that I agreed to do that. I voiced my preference for an options paper but went forward as long as the status was accurately described.

Mr. SULLIVAN. Dr. Stablein?

Mr. STABLEIN. I agree with Mr. Mohseni and believe his examples are the most apropos that I am aware of.

Mr. SULLIVAN. Mr. Kokajko?

Mr. KOKAJKO. As I replied in my response to Mr. Mohseni, which was formally required, I did tend to agree with him, and I think as it turns out, I was correct in that.

Mr. SULLIVAN. Ms. Haney, what Commission policy guidance directs staff to strip out regulatory findings of the Safety Evaluation Report to create the TER?

Mr. MOHSENI. As far as I know, I don't think there is any precedence for this—

Mr. SHIMKUS. I think he was directing to—

Mr. MOHSENI. I am sorry.

Mr. SULLIVAN. Directed toward Ms. Haney. Thank you, Mr. Chairman.

Mr. SHIMKUS. I am sorry.

Mr. SULLIVAN. Thank you, Mr. Chairman.

Ms. HANEY. I was going to say thank you.

Mr. SULLIVAN. We will get to you next.

Ms. HANEY. I am not aware of any regulatory guidance that would proscribe that.

Mr. SULLIVAN. OK. From your email exchange from Mr. Mohseni, and that is at Tab 6, page 2, you say your direction to strip out staff conclusions on their analysis should be consistent with statements made by the Chairman that the document would not contain any findings. Was the preparation of the TER under the direction of Chairman Jaczko or the Commission?

Ms. HANEY. The preparation of the Technical Evaluation Report would be under the Commission, but my statement, my email, that was one of the considerations that I took into consideration.

Mr. SULLIVAN. Was the preparation of the TER under the direction of Chairman Jaczko or the Commission? Was it, yes or no? Can you answer it quickly? How long have you worked there?

Ms. HANEY. I have worked there for multiple years as you have heard.

Mr. SULLIVAN. OK.

Ms. HANEY. I mean, I was looking at the Technical Evaluation as an office document, and I was considering it from that standpoint. I did not consider the elements of your question.

Mr. SHIMKUS. The gentleman's time is——

Mr. SULLIVAN. May I ask one more?

Mr. SHIMKUS. Quickly.

Mr. SULLIVAN. Is there any written document that outlines specifically what the Chairman desires you to do?

Ms. HANEY. No.

Mr. SULLIVAN. OK. Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time is expired. We have votes on the floor. We really want to thank you. This is never easy, and we appreciate your forthrightness, your calmness under stress and strain and we have to have an NRC that the American public trusts. You have to have a government that you trust. We are all in this together.

I want to thank the witnesses for coming today and for the testimony and members for the devotion to this hearing today. The committee rules provide that members have 10 days to submit additional questions for the record, and we hope that if they do so, in particular, that you would then get those back to us.

Mr. GREEN. Mr. Chairman, I would like to join you in thanking our witnesses because that is the purpose of our committee, and you have heard a lot of our opinions and also our questions and appreciate your being here.

Mr. SHIMKUS. The hearing stands adjourned.

[Whereupon, at 12:02 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of Chairman Fred Upton
Environment and the Economy Subcommittee Hearing
“NRC Repository Safety Division – Staff Perspective on
Yucca License Review”
June 24, 2011**

Today’s hearing continues our examination of management practices at the Nuclear Regulatory Commission, particularly the relationship between the Chairman’s office and the rest of the Agency.

I especially thank our witnesses who appear today under uncomfortable circumstances. It is clear things aren’t as they should be at the NRC and it’s never easy to discuss these problems in public. Our witnesses today have many years of experience under multiple NRC Chairmen and they have strong views about what integrity means in NRC management and decision-making. Thank you for being here so we can make sure we get accurate information,

After nearly three decades of scientific research, strong bipartisan collaboration, and billions of taxpayer dollars invested, America deserves to know: Does the design, performance, and operation of the proposed Yucca repository as described in DOE’s license application comply with all applicable NRC regulations for the disposal of high-level radioactive waste?

That’s exactly what our witnesses today are charged with finding out and reporting publicly to the full Commission and the rate payers who paid for this work. They are on the frontlines working within the NRC division responsible for the independent safety review of the Yucca Mountain repository license-application. Staff perspective on the termination of the Yucca license review is absolutely

necessary to understand the full story of the effort to derail the Yucca Mountain repository.

We also need to get a better understanding about the flow of information to and from the full Commission and whether policy guidance to staff is coming from one Commissioner – the Chairman – or from the full Commission, and whether the most senior staff are serving just one Commissioner – the Chairman – or all the Commissioners.

I'm also eager to learn if our witnesses agree with the Inspector General's report, which revealed discontent among Commissioners and staff on behalf of the Chairman's manipulative practices.

DOE filed the Yucca License application in June 2008. The Nuclear Waste Policy Act says that NRC must issue a final rule on the application within three years, or explain to Congress why it needs more time, but only up to another year.

Here we are three years later and the Commission has not even voted on whether the application is still active. Instead, the Commission, or rather a single Commissioner, has shut down the review that is required by law.

That's why we must examine these questions under a microscope to finally piece together the complete picture of what's wrong at the NRC and what can be done to fix it.

We must remove any political interference and restore the "independence" to this critical independent agency. Our nuclear future and our national security hang in the balance. The American people deserve better.

**Opening Statement for the Honorable Joe Barton
Chairman Emeritus, Energy and Commerce Committee
Subcommittee on Environment and Economy
“NRC Repository Safety Division - Staff Perspective on Yucca License
Review”
June 24, 2011**

Thank you, Mr. Chairman for bringing us together today for this hearing: “NRC Repository Safety Division – Staff Perspective on Yucca License Review”. I want to thank the NRC staff here with us today in advance of their testimony. I can only imagine what you have had to deal with and juggle in this situation.

Yucca Mountain, as one of my colleagues so eloquently put it, is a national treasure. The NWPA of 1982, Amendment Act of 1987 and HJ Res 87, which overrode the State of Nevada’s objection to the site selection all passed and were signed off by the President and voted on favorably, which huge bipartisan majority support.

I think we will determine today, even more so, that the Chairman has continuously manipulated, the system, and his staff to change the course of history to shut this project down as if there was only “Chairman Jaczko Law” to do so.

From all of the testimony and investigation thus far, including that of the Office of Inspector General and Mr. Bell’s thorough report, Mr. Jaczko’s actions have not been that befitting a Chairman. His continued manipulation of the truth, and intimidation of his fellow commissioners, calls for his immediate resignation in my opinion.

He has violated the rules of the commission by not affording its commissioners all of the same information, by leaving valuable pieces of information out to suit his overall agenda to shut Yucca Mountain down and be sure that it was defunded. And this is NOT just my opinion, this is the fact.

I am very anxious to hear from our witnesses today. I wish to determine whether they have been given the full ability to be able to do their job, and report their work to the public and in full view of the entire commission, not just the Chairman. Thank you all for your testimony today. With this I yield back my time.

Responses to
Post Hearing Questions for the Record from
Janet P. Kotra, Ph.D.,
Senior Project Manager
Division of High Level Waste Repository Safety
United States Nuclear Regulatory Commission to the
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
United States House of Representatives
Concerning the NRC Staff Perspective on Yucca License Review

The Honorable John Shimkus

QUESTION 1

What, if any, are the specific differences in content between the SER Volume 3 and the "reversible" SER Volume 3?

ANSWER

I contributed to the preparation and editing of SER Volume 3, leading up to its delivery, last July to Ms. Haney for her review and approval. I was not a party to its later modification into a "reversible SER" and cannot speak with authority to the difference between the two documents. I would refer you to the answer provided to this question by my supervisor, Dr. King Stablein.

QUESTION 2

Is there anything you said during the hearing that you wish to clarify?

ANSWER

No. I do not wish to clarify anything I said during the hearing.

The Honorable Joe Barton

QUESTION 1

What guidance from upper management have you had regarding what you are allowed to say and not say in today's hearing?

ANSWER

I received no such guidance from upper management.

QUESTION 2

Did Chairman Jaczko withhold information from any staff or the commissioners to manipulate commission decisions?

ANSWER

I have no direct knowledge that Chairman Jaczko withheld information from staff or the Commissioners to manipulate Commission decisions. However, the NRC Inspector General's report, "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application," issued June 6, 2011, contains extensive documentation suggesting the Chairman did indeed engage in such behavior.

QUESTION 3

Do ANY of you report directly to Mr. Mike Weber?

ANSWER

I report directly to Dr. King Stablein. I do not report directly to Mr. Mike Weber.

QUESTION 4

Who put Mr. Weber in charge?

ANSWER

Mr. Weber was appointed by the Executive Director for Operations, Mr. William Borchardt, under authority delegated by the Chairman. As the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs, Mr. Weber is responsible for overseeing all activities in the Office of Nuclear Material Safety and Safeguards, including the Yucca Mountain Program.

QUESTION 5

Please explain your relationship with Mr. Weber.

ANSWER

I report directly to Dr. King Stablein, who is Chief of the Project Management Branch. Dr. Stablein reports to Mr. Aby Mohseni, Deputy Division Director for High-Level Waste Repository Safety (HLWRS). Mr. Mohseni reports to the Division Director, Lawrence Kokajko, who reports directly to Catherine Haney, the Office Director for NMSS. Ms. Haney reports directly to Mr. Weber. So, I am five levels below Mr. Weber in the chain of command.

QUESTION 6

Is Mr. Weber intimidating you and/or the other staff? If so, who?

ANSWER

Mr. Weber does not intimidate me. I do not know if he intimidates other members of the staff.

QUESTION 7

Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko's requests, even if it means going against what you know is true and correct?

ANSWER

Since Mr. Weber assumed his current position, I rarely, if ever, interact with him directly. I often disagree with instructions from Mr. Weber, as relayed through my management chain. When preparing a memorandum to the Commission for Ms. Haney's signature, his instructions, as relayed through Ms. Haney, deviated from what I knew to be true and correct. As a result, I filed a "nonconcurrence" in accord with agency procedures, and asked that my name be removed from the draft concurrence package.

QUESTION 8

Is ANYONE making it difficult for you to complete your job, and allow information to get to all supervisors and commissioners in its completed form? If so, who? What is their purpose for making you withhold this information?

ANSWER

On February 4, 2011, Ms. Haney sent the Commission a memorandum entitled "Update on the Yucca Mountain Program". Mr. Mohseni, Dr. Stablein, and I file "nonconcurrences" in connection with this memorandum because we considered that the final memorandum did not accurately portray the status of the Yucca Mountain Program. In this instance, staff was prevented from providing the Commission with information staff felt should be shared. Ms. Haney's view was that the additional information was not needed in a status memo.

On a separate occasion, I was shown, but not given, e-mail messages from the Office of the Executive Director for Operations providing direction to NMSS and HLWRS management about how to answer questions from Commissioner Svinicki about the impact of budget cuts on the ability of staff to fulfill its obligations under the Nuclear Waste Policy Act. Staff was directed to either not answer, or to provide incomplete answers to the Commissioner's questions.

I was not told the specific reasons why staff was directed to withhold this information from individual Commissioners or from the Commission as a whole.

As a member of the senior technical staff, I feel it is incumbent on me to keep my supervisors, Dr. Stablein, Mr. Mohseni and Mr. Kokajko fully informed. All three of these gentlemen foster within the Division of HLWRS an atmosphere of open communication and trust. They have always actively encouraged me to keep them thoroughly informed of developments in my areas of responsibility for the Yucca Mountain Program.

Responses to
Post Hearing Questions for the Record for
King Stablein
Branch Chief
Division of High Level Waste Nuclear Repository
United States Nuclear Regulatory Commission
To the
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
United States House of Representatives
Concerning the NRC Staff Perspective on Yucca License Review

The Honorable John Shimkus

QUESTION 1

What, if any, are the specific differences in content between the SER Volume 3 and the "reversible" SER Volume 3?

ANSWER

The terminology "reversible SER" has introduced understandable confusion as the staff endeavors to explain the various versions of the SER and the TER, and their relationships to each other.

The process of developing TERs began with the then-existing SER volumes. Those volumes were further developed—NOT as SER volumes—but as transition documents that would provide the most efficient pathway toward development of the TERs. What resulted from that transitional work were documents to be put on the shelf that have been unfortunately referred to as "reversible SER volumes." They are not SERs inasmuch as they have not undergone the appropriate level of management review and would require some staff changes prior to being issued as SERs.

More directly in answer to this question, I am going to assume that "SER Volume 3" refers to the July 2010 version of the draft SER that was submitted to the NMSS Office Director for review. The difference between this draft and the "reversible" SER Volume 3 that is on the shelf is that the "reversible" SER Volume 3 has undergone significant refinement and improvement by the staff since the document was submitted to the NMSS Office Director for review. Also, it has received a finding of No Legal Objection from the Office of General Counsel on the basis of the attorneys' legal review.

QUESTION 2

Is there anything you said during the hearing that you wish to clarify?

ANSWER

No.

The Honorable Joe Barton

QUESTION 1

What guidance from upper management have you had regarding what you are allowed to say and not say in today's hearing?

ANSWER

I received no guidance from upper management regarding what I was allowed to say or not say in the hearing.

QUESTION 2

Did Chairman Jaczko withhold information from any staff or the commissioners to manipulate commission decisions?

ANSWER

I have no first-hand knowledge that Chairman Jaczko withheld information from staff or the commissioners to manipulate commission decisions. However, the NRC Inspector General's June 6, 2011 report entitled "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application" contains extensive documentation suggesting that the Chairman may have engaged in such activities.

QUESTION 3

Do ANY of you report directly to Mr. Mike Weber?

ANSWER

I report directly to Mr. Aby Mohseni. I do not report directly to Mr. Mike Weber.

QUESTION 4

Who put Mr. Weber in charge?

ANSWER

Mr. Weber is the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs. As such, he is responsible for overseeing all activities in the Office of Nuclear Material Safety and Safeguards, including the Yucca Mountain Program.

QUESTION 5

Please explain your relationship with Mr. Weber.

ANSWER

I report directly to Mr. Aby Mohseni, Deputy Division Director for High Level Waste Repository Safety. Mr. Mohseni reports to the Division Director, Lawrence Kokajko, who reports directly to Catherine Haney, the Office Director for NMSS. Ms. Haney reports directly to Mr. Weber. Hence, I am four levels below Mr. Weber in the chain of command.

QUESTION 6

Is Mr. Weber intimidating you and/or the other staff? If so, who?

ANSWER

Mr. Weber is not intimidating me. I do not know if he is intimidating other staff.

QUESTION 7

Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko's requests, even if it means going against what you know is true and correct?

ANSWER

No. I have had virtually no direct contact with Mr. Weber over the past several months, and he has not directly intervened to make it difficult for me to carry out my activities as I see fit.

QUESTION 8

Is ANYONE making it difficult for you to complete your job, and allow information to get to all supervisors and commissioners in its completed form? If so, who? What is their purpose for making you withhold this information?

ANSWER

On February 4, 2011, Ms. Haney sent the Commission a memorandum entitled "Update on the Yucca Mountain Program". Mr. Mohseni, fellow staff member Janet Kotra, and I filed Non-Concurrences in connection with this memorandum because we considered that the document did not adequately and fully convey the true state of the Yucca Mountain Program. This is one example where staff was prevented from providing the Commission with the information that staff felt needed to be shared. Ms. Haney's view was that the additional information was not needed in a status memo.

Other than this example, I do not recall a case where I felt someone was preventing me from getting information to the commission. My position calls for me to provide information to my supervisor, Mr. Mohseni, and he actively encourages me to keep him thoroughly informed of developments in the Yucca Mountain Program.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3841

July 18, 2011

Mr. Aby Mohseni
Acting Director
Division of High Level Waste Repository Safety
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Mohseni:

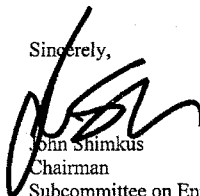
Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, June 24, 2011, to testify at the hearing entitled "NRC Repository Safety Division – Staff Perspective on Yucca License Review."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, August 1, 2011. Your responses should be e-mailed to the Legislative Clerk, in Word or PDF format, at Allison.Busbee@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: Gene Green, Ranking Member, Subcommittee on Environment and the Economy

Attachment

The Honorable John Shimkus

1. What, if any, are the specific differences in content between the SER Volume 3 and the “reversible” SER Volume 3?
2. Is there anything you said during the hearing that you wish to clarify?

The Honorable Joe Barton

1. What guidance from upper management have you had regarding what you are allowed to say and not say in today’s hearing?
2. Did Chairman Jaczko withhold information from any staff or the commissioners to manipulate commission decisions?
3. Do ANY of you report directly to Mr. Mike Weber?
4. Who put Mr. Weber in charge?
5. Please explain your relationship with Mr. Weber?
6. Is Mr. Weber intimidating you and or the other staff? If so, who?
7. Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko’s requests, even if it means going against what you know is true and correct?
8. Is ANYONE making it difficult for you to complete your job, and allow information to get to all supervisors and commissioners in its completed form? If so who? What is there purpose for making you withhold this information?
9. Have reports that indicated Yucca Mountain to be safe been altered or changed in any way?
10. What reports and by whom?

The Honorable John Shimkus

1. What, if any, are the specific differences in content between the SER Volume 3 and the 'reversible' SER Volume 3?

Reply: The content of the two documents are the same. The content of SER Volume 3, which includes the technical evaluation of the post-closure performance of the mountain and regulatory compliance findings, did not have OGC's 'no legal objections' on all its chapters and segments at the time the Chairman directed the staff to stop working on the SER (September 30, 2010.) The 'reversible' SER Volume 3 content, which includes both the technical evaluation of the post-closure performance of the mountain and regulatory compliance findings, incorporated OGC comments and has OGC's 'no legal objections' on all its chapters and segments as of March 16, 2011.

2. Is there anything you said during the hearing that you wish to clarify?

Reply: Yes. In response to a question regarding when the SER was complete, I indicated it was complete at the end of 2010. In reviewing the log, I note that, by January 17, 2011, the Reversible Volume 3 had 'no legal objection' for all its chapters and segments, except Chapter 12. By March 16, 2011, OGC provided its 'no legal objection' on the last remaining chapter of the reversible SER Volume 3.

The Honorable Joe Barton

1. What guidance from upper management have you had regarding what you are allowed to say and not say in today's hearing?

Reply: I did not seek any guidance.

2. Did Chairman Jaczko withhold information from the staff or the Commissioners to manipulate Commission decisions?

Reply: Yes. As the OIG report indicates, had the Commission been fully aware of the Chairman's decision to shutdown the program and discontinue the completion of the Safety Evaluation Reports, the outcome would have been different. The Chairman has taken full responsibility for this direction at his meeting with the Division staff. As the staff testified, some senior managers have contributed to the control of information from the staff to the full Commission regarding budgetary and programmatic impacts on this program, and the options to mitigate those adverse impacts. Some senior managers have enabled him to control and manipulate information to ensure that the full Commission will not be able to fully participate in policy-making as required under the Atomic Energy Act and to also leave the program unfunded even when DOE's license application remains before the NRC and NWPA remains in effect.

3. Do ANY of you report directly to Mr. Mike Weber?

Reply: I do not report directly to Mike Weber.

4. Who put Mr. Weber in charge?

Reply: Mike Weber's appointment to the deputy Executive Director for Operations (EDO) was announced by the EDO. I am not familiar with the procedures for such appointment. I suspect he would not be appointed without the Chairman's approval.

5. Please explain your relationship with Mr. Weber?

Reply: As Acting Division Director, I report to the Office Director, Cathy Haney, who reports to Mike Weber. As Director of the statutory Office of Nuclear Materials Safety and Safeguards (NMSS), she has independence and authority. On the other hand the Deputy EDO is not a statutory position and does not have similar authority. However Mike appears to have a significant amount of control over NMSS products, especially products related to my Division.

6. Is Mr. Weber intimidating you or the other staff?

Reply: I am not intimidated by Mr. Weber, although he has tried. I have heard of others who have been.

7. Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko's requests, even if it means going against what you know is true and correct?

Reply: Mr. Weber has frequently used his position to exert pressure on his direct reports. For example, he uses performance appraisal processes and succession planning as a means to establish his control, not based on merit. Mr. Weber appears to be the voice of the Chairman when it comes to directing the staff on certain issues, such as budget formulation, Commission memorandum, and programmatic impact. As such, senior managers appear pressured to follow his direction. Examples include a Commission Options paper on Waste Confidence Rule. The staff was of the view to recommend that the Rule not be completed before 2018 because of the pace of research by organizations outside the NRC. While staff was finalizing the Commission Options paper, the staff was directed to change its recommendation to a completion date of 2016. The authors objected but did not prevail. This direction came from the Chairman's office through senior managers. The other Commissioners were not informed of the staff's real views.

8. Is ANYONE making it difficult for you to complete your job, and allow information to get to all supervisors and Commissioners in its completed form? If so who? What is their purpose for making you withhold this information?

Reply: Yes. Those making it particularly difficult for the staff to conduct business in accordance with our mission and our procedures are the Chairman and his office staff, the General Counsel, Mike Weber and the Office Director. I have introduced my second non-concurrence on a Commission memorandum that fails to provide complete information to the Commission for its deliberations and policy-making. This has never happened to me before. In this last episode, the General Counsel provided inappropriate

direction on a staff Commission paper and senior management accepted such direction against my advice. The basis for my second non-concurrence is as follows: As the three-year statutory time-limit for the NRC to issue its licensing decision, as provided in the Nuclear Waste Policy Act (NWPA), is approaching (September 8, 2011), I was not allowed to include in the Commission paper a reminder of this important statutory milestone and inform the full Commission of its options and recommend correspondence with the Congress. The NRC General Counsel did not approve, that the staff provide such information to the full Commission at a critical time. The OGC senior manager indicated that the inclusion of such information to the full Commission would be an "insult to the commission's intelligence." What is appalling is that my senior managers agreed with the General Counsel and asked me to proceed with my non-concurrence, which I provided to the office Director on July 21, 2011.

As I was responding to this question over the last several days, a surprising development took place this morning. To my and to others' great surprise, before my non-concurrence was issued to the Commission by the Office Director, I learned that Steve Burns, the same NRC general counsel who argued through proxy to keep the information from the Commission, had a change of heart and informed the Commission himself, by e memorandum dated July 26 (five days after I submitted my non concurrence to the Office Director) of the impending expiration of the NWPA time limit and making his recommendation, which I, and I assume many of my colleagues, disagree with. I informed the commissioners' chiefs of staff of Mr. Burns unethical behavior and setting the record straight regarding Steve Burns' conflict of interest in his role as the general counsel. In effect, because of how Mr. Burns conducts himself, the staff is left without the benefit of counsel.

9. Have reports that indicated Yucca Mountain to be safe been altered or changed in any way?

Reply: Yes. There was an attempt by senior management, apparently at the direction of the Chairman's office, to revise the conclusions of the staff's technical evaluation report on post-closure. The report did not contain any regulatory compliance findings. Although the report's conclusions were changed, the full scope of changes and a total overhaul of the report originally contemplated by senior managers was averted because of my appeal to the full Commission to intervene.

10. What reports and by whom?

Reply: See reply 9 above.

RESPONSES TO ADDITIONAL QUESTIONS SENT TO
LAWRENCE E. KOKAJKO
ACTING DEPUTY OFFICE DIRECTOR
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
US NUCLEAR REGULATORY COMMISSION

FROM THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
US HOUSE OF REPRESENTATIVES
IN A LETTER DATED JULY 18, 2011

Submitted August 1, 2011

The Honorable John Shimkus

1. What, if any, are the specific differences in content between the SER Volume 3 and the "reversible" SER Volume 3?

Response:

In terms of technical content and topics, there is no significant difference between the two documents.

2. Is there anything you said during the hearing that you wish to clarify?

Response:

I do not wish to clarify anything I said during the hearing.

The Honorable Joe Barton

1. What guidance from upper management have you had regarding what you are allowed to say and not say in today's hearing?

Response:

On May 11, 2011, an agency announcement entitled, "Policy - Cooperation with a House Energy and Commerce Committee Investigation," stated, "The House Committee on Energy and Commerce is conducting an investigation pertaining to the pending license application for construction of a high-level waste repository at Yucca Mountain, Nevada. The agency takes this opportunity to remind employees that they always have the right to communicate with Congress and we, of course, always encourage

employees to cooperate with congressional requests." Other than this, I received no direction or guidance suggesting what I was allowed to say or not say.

2. Did Chairman Jaczko withhold information from any staff or the commissioners to manipulate commission decisions?

Response:

I do not have first-hand knowledge that the Chairman withheld information from any staff or the Commission. However, I agree with the conclusions of the Office of Inspector General report, entitled, "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application (OIG Case No. 11-05)," dated June 6, 2011.

3. Do ANY of you report directly to Mr. Mike Weber?

Response:

I currently do not report directly to Mr. Mike Weber. However, Mr. Weber is the review authority for my performance appraisal, although he does not prepare it.

Prior to his current role of Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs (DEDMRT), Mr. Weber was the Office Director for the Office of Nuclear Material Safety and Safeguards (NMSS). As Director for the Division of High-Level Waste Repository Safety in NMSS, I reported directly to him during that time.

4. Who put Mr. Weber in charge?

Response:

As I understand the process, the Executive Director for Operations (EDO), Mr. William Borchardt, in consultation with the Chairman, selected Mr. Weber for his current position as DEDMRT. This position is not noted in the Energy Reorganization Act of 1974 as a statutory office.

However, in his previous capacity as the Director for the Office of NMSS, he was appointed by the Commission, since the Office of NMSS is a statutory office as stated in the Energy Reorganization Act of 1974. This, and similar statutory office positions, may report directly to the Commission and serve at the pleasure and be removable by the Commission.

5. Please explain your relationship with Mr. Weber?

Response:

There is a line management relationship. I am in the Office of NMSS, an office that reports to Mr. Weber as the DEDMRT. Mr. Weber reports directly to the EDO.

6. Is Mr. Weber intimidating you and or the other staff? If so, who?

Response:

Mr. Weber is not intimidating me. I do not know whether Mr. Weber is intimidating others.

7. Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko's requests, even if it means going against what you know to be true and correct?

Response:

While I have had professional disagreements with Mr. Weber on matters related to program budget, management and implementation, to my knowledge, he has not engaged in or discussed taking an overt personnel action against me.

8. Is ANYONE making it difficult for you to complete your job, and allow information to get to all supervisors and commissioners in its completed form? If so, who? What is the purpose for making you withhold this information?

Response:

While I have had professional disagreements with line management and others on matters related to program budget, management and implementation, to my knowledge, no one has engaged in or discussed taking a personnel action against me.

9. Please tell us everything you know about the budget, who has been in charge of it? Have you been privy to all of the documents, have files come up missing or changed? If so, who has changed them?

Response:

I shall limit my response to this question to the use of Nuclear Waste Funds (NWF) to support the Yucca Mountain application review. The High-Level Waste (HLW) Core Group was originated to provide a framework for all offices who received funding from the NWF appropriation to develop a budget to support the program and to execute and monitor the program. Representative offices (e.g., NMSS, Atomic Safety and Licensing

Board Panel, Office of General Counsel, Office of Information Services, Office of Administration, and the Office of the Chief Financial Officer), attended these meetings to outline a budget and strategy. The HLW Core Group would consider budget considerations and priorities, budget justification language, and how best to use the funds available. If reductions needed to be made, the HLW Core Group assessed each item to agree upon the reduction.

Sometimes, certain budget parameters were changed without the HLW Core Group's review and acceptance, and the group would have to adjust and adapt subsequently. It is unclear to me if the HLW Core Group or the program managers were privy to all documents that were generated and who made changes. Regardless, once a budget is prepared, it is sent to the Chairman for a period of time for his exclusive review. Subsequently, once the outcome of the Chairman's review is incorporated, it is sent to the Commission as a whole for deliberation.

10. Do you believe that it is the responsibility of your management to keep the commission fully and currently informed?

Response:

Yes. In particular, the EDO and the NMSS Office Director have this responsibility under the Energy Reorganization Act of 1974.

11. Under the EDO (Executive Director of Operations) is it not the Staff's responsibility to keep the commission fully and currently informed?

Response:

Yes. As a manager within the Office of NMSS that reports to the Office of the Executive Director for Operations, I believe the staff has a responsibility to keep the Commission fully and currently informed.

According to the Energy Reorganization Act of 1974, the Executive Director for Operations is appointed by the Commission and serves at the pleasure of, and be removed by, the Commission. The EDO shall perform such functions as the Commission may direct, except that the EDO shall not limit the authority of the director of any component organization in the Energy Reorganization Act of 1974 to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out the position's responsibilities. However, each director shall keep the EDO fully and currently informed concerning the content of all such direct communications with the Commission.

According to NRC Management Directive 9.17, the Executive Director for Operations, through the Chairman, is responsible for ensuring that the Commission is fully and currently informed about matters within its functions.

12. So the Staff has the legal responsibility to inform the entire commission completely on all of its findings?

Response:

Yes, as noted under questions 10 and 11 above.

13. Do you believe the commission was fully and completely informed?

Response:

As stated previously, I agree with the conclusions of the Office of Inspector General report, entitled, "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application (OIG Case No. 11-05)," dated June 6, 2011.

14. What information do you believe that the commission was important to have to function and to act upon?

Response:

I believe the Commission should have received full and complete information that would have allowed the Commission to act collegially to address the issues associated with the Yucca Mountain application review. Knowledgeable executive staff leadership could have acted to afford the entire Commission budget information, staff perspectives, and time to assess and develop appropriate program direction. This could have enabled more budget and program information to rise to the entire Commission and would have precluded decisions based on incomplete information or perception. Such information should have included all staff level budget deliberations and conclusions, program management views, and ultimately a complete and open sharing of information among the Commission itself.

15. If no, then who withheld information, and what information has been withheld?

Response:

As stated previously, I agree with the conclusions of the Office of Inspector General report, entitled, "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application (OIG Case No. 11-05)," dated June 6, 2011. Beyond that, knowledgeable executive staff leadership could have acted

to afford the entire Commission budget information, staff perspectives, and time to assess and develop appropriate program direction.

16. Did they receive that information?

Response:

Yes. With regard to the Yucca Mountain application review, the Commission did eventually receive sufficient information. However, the receipt of delayed information is not conducive to the Commission making a fully informed decision.

August 1, 2011

The Honorable John Shimkus
Chairman, Subcommittee on Environment
and the Economy
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission appeared before the Committee on Environment and the Economy on June 24, 2011, at a hearing titled, "*NRC Repository Safety Division - Staff Perspective on Yucca License Review.*" From that hearing, you forwarded questions for the hearing record. The responses to those questions are enclosed. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:
As stated

cc: Gene Green, Ranking Member, Subcommittee on Environment and the Economy

Responses to Questions – Letter dated July 18, 2011

The Honorable John Shimkus

QUESTION 1 What information concerning any of the language you disputed in the TER delivered to you on or about March 20, 2011 was provided to the NRC Chairman or his Chairman's office staff?

ANSWER

I did not provide any language from the draft Technical Evaluation Report (TER) provided to me on or about March 20, 2011, to the NRC Chairman or his staff. I did however have a general discussion on the similarities between the draft TER and the July 2010 version of the SER with the Chairman's Policy Advisor for Materials shortly after I reviewed select sections of the TER.

QUESTION 2 What feedback or response did the NRC Chairman or his Chairman's office staff provide you or the Deputy EDO Michael Weber concerning any of the language you disputed in the TER delivered to you on or about March 30, 2011?

ANSWER

As stated above, I did have a general discussion with the Chairman's Policy Advisor for Materials. In this conversation we discussed the differences between drawing conclusions against the Yucca Mountain Standard Review Plan and 10 CFR Part 63. We also discussed the fact that the content of the TER was under the control of the Office of the Executive Director for Operations. No specific feedback on my concerns was provided during this conversation and I did not receive any specific feedback from the Chairman.

Mr. Weber is in the best position to comment on whether he received any feedback or response from the Chairman or his staff.

The Honorable Henry A. Waxman

QUESTION 1 Did NRC staff ever complete, and did you and the Office of General Counsel sign off on, a final version of Volume 3 of the Safety Evaluation Report?

ANSWER

On July 15, 2010, a draft version of Safety Evaluation Report Volume 3 was provided to me for review by staff. I neither completed my review nor signed off on a final version of Volume 3 of the SER. The Office of the General Counsel has not provided a "no legal objection" on a final Volume 3 SER.

QUESTION 2 Did the NRC Chairman or Chairman's staff direct you to tell Aby Mohseni to modify the Technical Evaluation Report (TER), as you did in an email dated June 6, 2011? If no, why did you decide to direct Mr. Mohseni to modify the TER?

ANSWER

The NRC Chairman or his staff did not direct me to tell Aby Mohseni to modify the TER. My reasons for directing that the TER be modified were explained in my June 6, 2011, email to Mr. Mohseni. Specifically, I stated the following:

"I have reviewed certain sections of the staff's draft "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain License Application; Postclosure Volume: Repository Safety After Permanent Closure" (TER Postclosure Volume) and do not approve the document, as written, for publication and public distribution unless the draft document is revised.

1. *Consistent with our original intent to make the TER a public document and a desire to be consistent with statements made by the Chairman that the document would not contain any "findings," any references to a finding or conclusion against the YMRP need to be removed. In its current form, the draft Postclosure SER (Volume 3) and the TER*

Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be refocused consistent with the TER's objective ."

The Honorable Joe Barton

QUESTION 1 What guidance from upper management have you had regarding what you are allowed to say and not say in today's hearing?

ANSWER

I did not receive any guidance from upper management on what I was allowed to say and not say at the June 24, 2011, hearing.

QUESTION 2 Did Chairman Jaczko withhold information from any staff or the commissioners to manipulate commission decisions?

ANSWER

I have no first hand knowledge of whether Chairman Jaczko withheld information from any staff or the Commissioners.

QUESTION 3 Do ANY of you report directly to Mr. Mike Weber?

ANSWER

I report directly to Mr. Mike Weber.

QUESTION 4 Who put Mr. Weber in charge?

ANSWER

Bill Borchardt, Executive Director for Operations selected Mr. Weber for the position of Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT).

QUESTION 5 Please explain your relationship with Mr. Weber?

ANSWER

Mr. Weber is my supervisor.

QUESTION 6 Is Mr. Weber intimidating you and or the other staff? If so, who?

ANSWER

Mr. Weber does not intimidate me. I am not aware that he intimidates other staff.

QUESTION 7 Is Mr. Weber making it difficult for you unless you comply with Mr. Jaczko's requests, even if it means going against what you know is true and correct?

ANSWER

As my supervisor, Mr. Weber supports me in my position as Office Director, Office of Nuclear Material Safety and Safeguards. He has never asked me to go against what I believe to be true and correct.

QUESTION 8

Is ANYONE making it difficult for you to complete you job, and allow information to get to all supervisors and commissioners in its completed form? If so who? What is there purpose for making you withhold this information.

ANSWER

As NMSS Office Director I have faced many challenges with regards to managing the Yucca Mountain Program. I believe these challenges to be consistent with what should be expected by anyone managing a large program of national significance. Recognizing that there are some legal limitations because of the adjudicatory nature of the program, I have not been prevented from providing information on the Project to others.

Committee on Energy and Commerce
Subcommittee on Environment and Economy

NRC Repository Safety Division- Staff Perspective on Yucca License Review

June 24, 2011

Exhibits Index

TAB	DESCRIPTION	DATE
1	Memorandum TO: Chairman Jaczko, Commissioner Klein, Commissioner Svinicki FROM: R.W. Borchardt, Executive Director of Operations SUBJECT: PLANS FOR THE HIGH-LEVEL WASTE REPOSITORY PROGRAM	March 30, 2010
2	Memorandum TO: R. William Borchardt FROM: Gregory B. Jaczko SUBJECT: Schedule for HLW SER	June 11, 2010
3	Memorandum TO: Office Directors and Regional Administrators FROM: J.E. Dyer, CFO and R.W. Borchardt, Executive Director of Operations SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION	October 4, 2010
4	Memorandum TO: Chairman Jaczko, Commissioner Svinicki, Commissioner Apostolakis, Commissioner Magwood, Commissioner Ostendorff FROM: Catherine Haney, Director Office of Nuclear Material Safety and Safeguards SUBJECT: UPDATE ON YUCCA MOUNTAIN PROGRAM	February 4, 2011
5	Email TO: Mitzi Young CC: Elva BowdenBerry, Daniel Lenehan, Jessica Bielecki, Marvin Itzkowitz, Lawrence Kokajko, King Stablein, Jack Davis FROM: Aby Mohseni SUBJECT: RE: Reversible SER 3	March 17, 2011
6	Email TO: Catherine Haney CC: Marvin Itzkowitz, Mitzi Young, Lawrence Kokajko, Jack Davis, Michael Weber, Bill Borchardt FROM: Aby Mohseni SUBJECT: RE: TER Volume 3	June 7, 2011
7	Memorandum TO: Chairman Jaczko, Commissioner Svinicki, Commissioner Apostolakis, Commissioner Magwood, Commissioner Ostendorff FROM: Aby Mohseni, Acting Director Office of Nuclear Material Safety and Safeguards SUBJECT: REQUEST FOR COMMISSION INTERVENTION	June 20, 2011

Not For Public Disclosure

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

March 30, 2010

MEMORANDUM TO: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki

FROM: R. W. Borchardt */RA by Martin Virgilio for/*
Executive Director for Operations

SUBJECT: PLANS FOR THE HIGH-LEVEL WASTE
REPOSITORY PROGRAM

The purpose of this memorandum is to inform the Commission of the U.S. Nuclear Regulatory Commission (NRC) staff's plans for its repository licensing review and the status of the infrastructure for the associated adjudicatory proceeding, in light of recent developments, including the allocation of Fiscal Year (FY) 2010 funding. In announcing the Administration's budget for FY 2011, on February 1, 2010, the President directed the U.S. Department of Energy (DOE) to "discontinue its application to the NRC for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010...." On March 3, 2010, DOE filed a motion with Construction Authorization Board 4 (CAB4) to withdraw its license application for the proposed geologic repository.

Background

On June 3, 2008, DOE submitted the Yucca Mountain Repository License Application to the NRC seeking authorization to construct a geologic repository at Yucca Mountain, NV. On September 8, 2008, the staff accepted DOE's application for docketing and review. In response to a notice of hearing published in the *Federal Register* on October 22, 2008, intervention petitions were filed. In May 2009, two interested governments, eight parties, and nearly 300 contentions were admitted to the proceeding. In August 2009, two additional parties were admitted after satisfying Licensing Support Network (LSN) requirements. The allocation of FY 2010 funding is depicted in the pie chart in Enclosure 1. Enclosure 2 provides a revised schedule of tentative completion dates for Safety Evaluation Report Volumes.

Licensing Proceedings

On February 1, 2010, DOE moved for an interim suspension of discovery as well as a stay of most aspects of the construction authorization proceeding through the disposition of an additional motion (which DOE said it would file within 30 days) seeking to withdraw, with prejudice, its license application. On February 2, 2010, CAB4 granted DOE's unopposed request for an interim suspension of discovery, pending disposition of DOE's motion to stay.

Contact: Janet Kotra, HLWRS
301-492-3190

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2

On February 16, 2010, CAB4 granted DOE's motion to stay the proceeding, pending resolution of DOE's expected motion to withdraw its license application. On March 3, 2010, DOE filed a motion seeking to withdraw its license application, with prejudice. By order dated March 5, 2010, CAB4 indicated it will not rule on that motion until after it rules on intervention petitions filed by the State of South Carolina, the State of Washington, and Aiken County, SC. Since that order, additional intervention petitions have been filed by the National Association of Regulatory Utility Commissioners and by the Prairie Island Indian Community.

Licensing Review

As the staff informed the Commission in a March 27, 2009, memorandum and the Commissioner's assistants in a June 5, 2009, note, the resources appropriated in FY 2008 through FY 2010 were not enough for the Agency to adhere to the schedule outlined in Appendix D, "Schedule for the Proceeding on Consideration of Construction Authorization for a High-Level Waste Geologic Repository," to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." Because of the reduced funding, the staff was obliged to slow its review of the license application and to develop its safety evaluation report (SER) in segments. On January 27, 2010, the staff informed CAB4 that it will complete SER Volumes 1 and 3 by no later than August and November 2010, respectively. The staff is continuing with its safety review and SER preparation at this time. However, in light of the President's FY 2011 budget, and assuming Congress provides no additional funding or direction to the contrary, staff will discontinue work on any remaining SER volumes once FY 2010 funds are exhausted and inform the Presiding officer in the proceeding of its actions. As of the end of February 2010, DOE had responded to all the staff's more than 600 requests for additional information. At this time, the staff has not identified a need for any additional information from DOE to complete the SER.

Knowledge Capture and Orderly Closure

For close to 30 years, as the United States has considered Yucca Mountain and other sites for deep geologic disposal of spent fuel and high-level waste (HLW), the NRC's HLW program has amassed a vast amount of information about, and experience with, the technical and regulatory issues associated with the potential licensing of a repository. The staff intends to preserve this knowledge as a resource for future use. In the event that the license review is terminated, the staff would document the current status of the license review in a NUREG document to capture much of the Yucca Mountain-specific technical and regulatory knowledge gained by the staff. Also, the staff will need to identify and retain other important technical and regulatory knowledge that could support future changes to the NRC's regulatory framework for HLW and spent fuel disposal. Much of this knowledge has been developed by the NRC staff and the Center for Nuclear Waste Regulatory Analyses (Center). The continued viability of the NRC's HLW Program, including the Center, is critical to maintain the core skills and range of expertise necessary for the NRC to implement future direction in the national program for HLW and spent nuclear fuel disposal. As much as possible, the staff will continue to retain this valuable source of skills and technical insight with fee-based funds and limited use of Nuclear Waste Fund monies.

Adjudicatory Hearing Infrastructure

The Atomic Safety and Licensing Board Panel (Panel) intends to maintain the infrastructure for the adjudicatory hearing associated with the HLW repository licensing proceeding, including the LSN, the Digital Data Management System (DDMS), and the Las Vegas Hearing Facility, until the Agency has completed the adjudicatory process regarding the DOE withdrawal request. If

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there is a final decision terminating the HLW repository licensing proceeding, and the Panel receives Commission direction that no further basis exists for maintaining any infrastructure related to the HLW repository licensing proceeding, the Panel anticipates that it will be able to remove DDMS components from the Las Vegas Hearing Facility and close the facility within 4 to 6 months. (Under the current lease, the Government must give the lessor at least 120 days notice of its intent to vacate.) Assuming adequate fee-based funding, the DDMS would remain functional within the Panel's Rockville, MD, hearing facility for use in the many combined license and other proceedings that the Panel will conduct over the next several years.

Whether the LSN should remain viable as a knowledge management tool once the HLW repository proceeding is terminated is one of the matters currently pending before CAB4. As noted by LSN Administrator Daniel Graser in his December 17, 2009, memorandum to CAB4, the LSN's principal function as the unified search index for the nearly four million documents in the HLW document collections for the various participants will be irrecoverably nullified if the DOE document collection (which constitutes 99 percent of the documentary material available via the LSN) is taken offline and archived. In the event of a non-appealable decision to permit DOE to remove its collection from the LSN and to discontinue the system, the Panel would require approximately 4 months from a final Commission determination to terminate the LSN to complete the decommissioning process.¹

Enclosures:

1. High-Level Waste Budget for Fiscal Year 2010 (Pie Chart)
2. Tentative Completion Dates for Safety Evaluation Report Volumes

¹ Although recent events, including the filing of several additional intervention petitions, suggest an increased level of adjudicatory activity over the coming months relative to the DOE withdrawal motion, the Panel anticipates that the Panel's current FY 2010 HLW funding should be adequate to cover those hearing-related activities. If, however, for any reason the DOE motion is not finally resolved before the Agency until late FY 2010 or the proceeding continues into FY 2011, the availability of sufficient FY 2011 resources for the Panel to complete these various infrastructure decommissioning activities will become increasingly problematic.

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Enclosures:

1. High-Level Waste Budget for Fiscal Year 2010 (Pie Chart)
2. Tentative Completion Dates for Safety Evaluation Report Volumes

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Office	HLWRS	HLWRS	HLWRS	HLWRS	TECHED
Name	JKotra	KStablein	AMohseni	LKokajko	KKribbs by email
Date	3/9/10	3/10/10	3/11/10	3/11/10	3/11/10
Office	OGC	ASLBP	NMSS	EDO	
Date	MYoung by phone	JWhetstone by email	MWeber	RWBorchardt (MVirgilio for)	
Name	3/11/10	3/09/10	3/24/10	3/30/10	

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¹ Although recent events, including the filing of several additional intervention petitions, suggest an increased level of adjudicatory activity over the coming months relative to the DOE withdrawal motion, the Panel anticipates that the Panel's current FY 2010 HLW funding should be adequate to cover those hearing-related activities. (If, however, for any reason the DOE motion is not finally resolved before the Agency until late FY 2010 or the proceeding continues into FY 2011, the availability of sufficient FY 2011 resources for the Panel to complete these various infrastructure decommissioning activities will become increasingly problematic.)

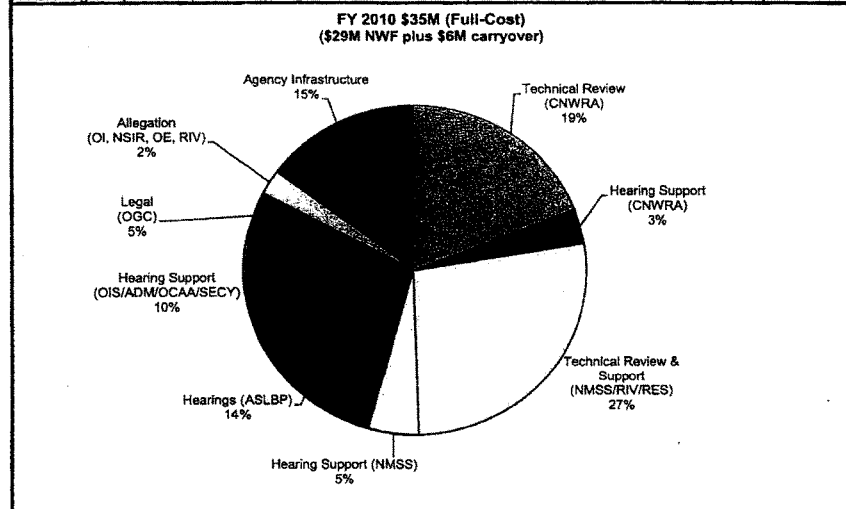
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Allocation of HLW Funding
FY 2010 \$35M Full-Cost
(\$29M NWF plus \$6M carryover)

HLW Offices	FY 2010 \$35M Full-Cost (\$29M NWF plus \$6M carryover)	
<i>Reserved Carryover</i>	945	3%
Technical Review (CNWRA)	6,676	19%
Hearing Support (CNWRA)	1,178	3%
Technical Review & Support (NMSS/RIV/RES)	9,506	27%
Hearing Support (NMSS)	1,677	5%
Hearings (ASLBP)	4,732	14%
Hearing Support (OIS/ADM/OCAA/SECY)	3,534	10%
Legal (OGC)	1,662	5%
Allegation (OI, NSIR, OE, RIV)	844	2%
Agency Infrastructure	5,200	15%
Total Program (Full-Cost)	35,009	100%



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TENTATIVE COMPLETION DATES FOR SAFETY EVALUATION REPORT VOLUMES
(Milestones to be completed no later than dates shown)

SER Volume Number	Volume 1 General Information	Volume 2* Preclosure	Volume 3* Postclosure	Volume 4* Administrative/ Programmatic	Volume 5* License Specifications
HLWRS Staff completes text and Executive Summary	04/23/2010	09/21/2010	06/14/2010	08/5/2010	09/30/2010
HLWRS Management and OGC Volume Review Complete	06/7/2010	11/3/2010	07/27/2010	09/17/2010	11/15/2010
Resolve Comments and Complete Review by Technical Editor	07/6/2010	12/03/2010	08/24/2010	10/18/2010	12/14/2010
OGC Complete Legal Review	07/20/2010	12/17/2010	09/08/2010	11/01/2010	01/13/2011
NMSS Director Review and Concurrence	07/27/2010	01/04/2011	09/22/2010	11/16/2010	01/27/2011
Final OGC Review Complete with "No Legal Objection"	08/03/2010	01/18/2011	10/06/2010	12/01/2010	02/10/2011
Publication of Final SER Volume	08/31/2010	03/01/2011	11/19/2010	01/14/2011	03/24/2011

*Work on these volumes will be discontinued once FY 2010 funds are exhausted

ENCLOSURE 2

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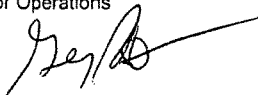
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June 11, 2010

MEMORANDUM TO: R. William Borchardt,
Executive Director for Operations

FROM: Gregory B. Jaczko
Chairman



SUBJECT: Schedule for HLW SER

I understand staff may be considering altering the schedule for publication of Volume 1 of the Yucca Mountain Safety Evaluation Report. I appreciate the work the staff has been doing on this project.

I believe it is in the best interests of the agency not to alter the schedule for the completion of SER volumes at this time, but instead to maintain the predictable schedule previously provided to the Commission in March, 2010 regarding plans for the High-Level Waste Repository Program. The agency's overall resources would be better utilized by maintaining the current schedule.

Therefore, the information in Volume 1 of the SER should be finalized and presented no earlier than August 2010, and subsequent volumes consistent with and not earlier than the schedule provided to the Commission in March, 2010.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D.C. 20555-0001

October 4, 2010

MEMORANDUM TO: Office Directors and Regional Administrators

FROM: J. E. Dyer *J. E. Dyer*
 Chief Financial Officer

R. W. Borchardt *R. W. Borchardt*
 Executive Director for Operations

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING
 RESOLUTION

On September 30, 2010, a Continuing Resolution (CR) through December 3, 2010, was signed into law. The purpose of this memorandum is to review and augment the earlier guidance on budget execution. The amount of funding available under a CR is determined by the annual CR legislation enacted by Congress. Funding availability is based on the previous fiscal year appropriated level augmented by unobligated carryover, as in past years. The NRC's FY 2011 budget request sustains agency's programs at approximately the same level as FY 2010, with the exception of the High-Level Waste Program. Therefore, offices should proceed to commit, obligate, and expend funds for ongoing activities to effectively use available resources during the CR.

Although the staff made improvements, we continue to emphasize the importance of effectively executing the agency budget by incrementally funding activities, as well as, preparing and moving procurement packages through the acquisition process with "subject to availability of funds" language, when appropriate, to expedite the award process when sufficient funds become available. Additionally, to maintain maximum flexibility, priority for funds for existing contract support activities should be allocated only to those activities that do not have sufficient forward funding.

As highlighted in the earlier guidance provided by the Office of the Chief Financial Officer (OCFO), CR funding will be provided based on the offices' needs as identified in their Funds Utilization Plans (FUP) submitted on August 6, 2010. Based on the office's FUPs, agency funding needs exceeded the funds available in the first quarter. As a result, we plan to provide offices with 60 percent of the requested funding for the period of the CR. Offices should advise OCFO of any significant mission critical needs as a result of the constrained funding.

During the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011. Offices should contact the OCFO prior to funding any questionable

CONTACT: Reginald W. Mitchell, OCFO
 (301) 415-7540

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Office Directors and RAs

-2-

activities under the CR. In addition, contract awards for FY 2011 should be reflected in your Advance Procurement Plan (APP). It is important that offices processing contract documents consistent with their APPs/FUPs continue to focus on improved budget execution during the CR.

With respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.

As we move forward, the OCFO will refine the CR plan and issue allowances for every CR period thereafter, until such time the agency receives its full appropriation/apportionment. After the agency receives its full-year appropriation/apportionment, this guidance will be rescinded and all normal budget execution operations will be resumed.

cc: PMDA/DRMA Directors

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MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED: October 4, 2010

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION

Edwin M. Hackett, Executive Director, Advisory Committee on Reactor Safeguards	E-Mail Mail Stops RidsAcraAcnw_MailCTR Resource
E. Roy Hawkins, Chief Administrative Judge, Atomic Safety and Licensing Board Panel	RidsAslbpManagement Resource
Stephen G. Burns, General Counsel	RidsOgcMailCenter Resource
Brooke D. Poole, Director, Office of Commission Appellate Adjudication	RidsOcaaMailCenter Resource
Hubert T. Bell, Inspector General	RidsOigMailCenter Resource
Margaret M. Doane, Director, Office of International Programs	RidsOipMailCenter Resource
Rebecca L. Schmidt, Director, Office of Congressional Affairs	RidsOcaMailCenter Resource
Eliot B. Brenner, Director, Office of Public Affairs	RidsOpaMail Resource
Annette Vietti-Cook, Secretary of the Commission	RidsSecyMailCenter Resource
	RidsSecyCorrespondenceMCTR Resource
	RidsEdoMailCenter Resource
Michael F. Weber, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, OEDO	
Darren B. Ash, Deputy Executive Director for Corporate Management, OEDO	RidsEdoMailCenter Resource
Martin J. Virgilio, Deputy Executive Director for Reactor and Preparedness Programs, OEDO	RidsEdoMailCenter Resource
Nader L. Mamish, Assistant for Operations, OEDO	RidsEdoMailCenter Resource
Kathryn O. Greene, Director, Office of Administration	RidsAdmMailCenter Resource
Patrick D. Howard, Director, Computer Security Office	RidsCsoMailCenter Resource
Roy P. Zimmerman, Director, Office of Enforcement	RidsOeMailCenter Resource
Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs	RidsFsmeOd Resource
Cheryl L. McCrary, Director, Office of Investigations	RidsOiMailCenter Resource
Thomas M. Boyce, Director, Office of Information Services	RidsOis Resource
James F. McDermott, Director, Office of Human Resources	RidsHrMailCenter Resource
Michael R. Johnson, Director, Office of New Reactors	RidsNroOd Resource
Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards	RidsNmssOd Resource
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation	RidsNrrOd Resource
Brian W. Sheron, Director, Office of Nuclear Regulatory Research	RidsResOd Resource
Corenthis B. Kelley, Director, Office of Small Business and Civil Rights	RidsSbcrMailCenter Resource
James T. Wiggins, Director, Office of Nuclear Security and Incident Response	RidsNsirOd Resource
Marc L. Dapas, Acting Regional Administrator, Region I	RidsRgn1MailCenter Resource
Luis A. Reyes, Regional Administrator, Region II	RidsRgn2MailCenter Resource
Mark A. Satorius, Regional Administrator, Region III	RidsRgn3MailCenter Resource
Elmo E. Collins, Jr., Regional Administrator, Region IV	RidsRgn4MailCenter Resource

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CC: TO THOSE ON THE ATTACHED LIST DATED: October 4 2010

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING RESOLUTION

<u>Name/Office</u>	<u>Mail Stop</u>
B. Gusack, NRO	T6 – D2
B. Ficks, OIS	O13 – H16M
B. Holt, RGN III	RGN III
J. Horn, HR	GW5 – A6
J. Dambly, ADM	TWB5 – E19M
J. Golder, FSME	T8 – A23
J. Coleman, RGN II	RGN II
M. Givvines, NRR	O13 – H16M
M. Muessle, RES	CSB6 – D20M
M. Hays, RGN IV	RGN IV
P. Baker, RGN I	RGN I
S. Abraham, NSIR	T4 – A45
T. Pulliam, NMSS	EBB – C1 24

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 4, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Catherine Haney, Director
Office of Nuclear Material Safety and Safeguards *Catherine Haney*

SUBJECT: UPDATE ON THE YUCCA MOUNTAIN PROGRAM

The purpose of this memorandum is to describe the status of the Yucca Mountain Program. Since October 1, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff's activities have focused on the orderly closure of the NRC staff's safety review of the license application submitted by the U.S. Department of Energy (DOE) for authorization to construct a geologic repository at Yucca Mountain (YM), NV. This memorandum also describes the staff's plans to capture the knowledge it acquired during more than 3 decades of pre-licensing preparation and more than 2 years of licensing review activities.

Program Status and Termination of Safety Review

Effective on October 1, 2010, the staff ceased its safety review of the YM license application. Consequently, the staff is converting the remaining volumes of its safety evaluation report (SER) ("Volume 3: Review of Repository Safety after Permanent Closure," "Volume 2: Review of Repository Safety before Permanent Closure," and "Volume 4: Review of Administrative and Programmatic Requirements") into technical evaluation reports, which will be published as NUREG reports in the knowledge management series. These reports will document the staff's technical review activities and technical conclusions but will contain no staff findings of regulatory compliance.

Knowledge Capture and Orderly Closure of Supporting Licensing Proceedings

The NRC staff is archiving the institutional, regulatory, and technical knowledge amassed over nearly 3 decades as it evaluated YM and other potential sites for deep geologic disposal of spent fuel and high-level waste. The staff is evaluating and documenting the lessons learned from (1) the development and implementation of site-specific regulations and guidance documents for geologic disposal, (2) the conduct of a licensing proceeding under Subpart J,

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301-492-3158

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"Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository," of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and (3) the establishment and the operation of the Licensing Support Network (LSN). The staff will preserve this knowledge as a resource for future use. Associated with this, on October 1, 2010, the staff directed the Center for Nuclear Waste Regulatory Analyses (CNWRA) to stop its license application review activities. The staff redirected CNWRA to focus its YM-related efforts on the preservation of knowledge and records management. As the High Level Waste (HLW) repository knowledge management tasks are completed, CNWRA will transition to non-HLW Repository work using fee-based resources to evaluate the safety and environmental impacts of longer term storage of spent nuclear fuel and to support the staff's development of a longer term waste confidence rulemaking plan.

The NRC staff established priorities for activities it will undertake commensurate with available resources and closure of the licensing review. As part of this effort, the staff will document its technical review of the license application in technical evaluation reports (NUREGs). These reports will capture the scientific findings, knowledge, and experience of the staff's technical review, the development of requests for additional information, and an evaluation of the license application without stating the conclusion that would be needed to support a licensing decision. The first of these, documenting postclosure review activities, is planned for completion in the second quarter of fiscal year (FY) 2011. Resources permitting, reports on the staff's preclosure (Volume 2) and administrative (Volume 4) reviews will follow later in the third and fourth quarters of FY 2011.

During the first quarter of FY 2011, the staff established its process for developing the technical evaluation reports and began preparation of those reports. The staff is responding to a Freedom of Information Act request for access to staff drafts of SER Volumes 2 and 3. Technical staff members continued to provide input to the Office of the General Counsel on adjudicatory hearing-related matters to assist in responding to orders from the Construction Authorization Board 4 (CAB4 or the Board), including directives on case management and identification of witnesses. Departing and other senior technical staff members were interviewed on videotape for knowledge capture and as a future training resource. Personnel from the Office of Administration and the Atomic Safety and Licensing Board Panel (ASLBP or the Panel) initiated discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility (LVHF), including its computer systems, physical infrastructure, and physical security infrastructure. During this period, the high-level waste core group continued discussions about the budget for orderly closure of the YM program to ensure coordination with preparation for renewal of the CNWRA contract and other contractual matters.

Hearing Process and Activities

CAB4 has continued to preside over the YM proceeding after denying the Department of Energy license application withdrawal motion in June 2010. The NRC staff, as required, has kept the Board informed of the status of the staff's application review activities. Specifically, on

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- 3 -

November 29, 2010, the staff informed CAB4 that it would not issue SER Volume 3 in November 2010 as previously planned, and that a revised schedule is indeterminate. On December 8, 2010, CAB4 ordered the staff to submit by December 22, 2010, a full explanation of its schedule change for the issuance of Volume 3 and directed the parties to confer and seek to reach agreement on a discovery status report by January 25, 2011. The staff replied on December 22, 2010, also indicating that the schedule for SER Volumes 4 and 2 was indeterminate. On December 14, 2010, CAB4 ruled on the Phase 1 legal issues and denied petitions for rule waivers. The Board also directed affected parties to submit a joint stipulation, or differing views, regarding the effects of the Board's Phase 1 legal issue rulings on admitted contentions by January 21, 2011. The major parties (including the NRC staff) timely responded and also filed differing views. In addition, DOE filed a January 21, 2011, motion seeking a suspension of the proceeding through May 20, 2011 and Nevada filed a January 20, 2011, motion seeking reconsideration of the rejection of a contention in its initial petition. CAB4 has not yet ruled on the suspension motion.

Absent contrary direction it is our understanding that the Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the Las Vegas Hearing Facility (LVHF), the Licensing Support Network (LSN), and the LVHF component of the Digital Data Management System (DDMS), until the end of FY 2011. At that time shut-down of the infrastructure would need to be accomplished to avoid the agency requiring Nuclear Waste Fund (NWF) money that has not been appropriated in order to complete the shut-down after FY 2011. We understand that ASLBP plans to send a memorandum in February that discusses this matter more fully and includes key action points for an orderly shutdown.

Resources

There are potential programmatic implications because of the limited NWF resources available to support all of the activities in this program. Currently, the Panel estimates that it will need \$2.7 million to support CAB4 and the adjudicatory infrastructure through the end of FY 2011. The staff estimates that \$18.0 million is needed to complete all high- and some medium-priority knowledge management and documentation activities associated with orderly closure of the NRC YM licensing program (Enclosure 1).

Assuming there are no additional activities regarding orderly closure or adjudication, the staff will apply \$10 million of FY 2011 NWF resources to these tasks, and will seek to reprogram \$2.0 (out of a total of \$7.1) million in prior-year NWF resources for salaries and benefits. The staff will convert \$2.1 million of the FY 2011 NWF contract funds into salaries and benefits. In addition, CNWRA will continue to expend the \$8.7 million of FY 2010 unliquidated obligations. The reprogramming effort is particularly important since FY 2011 resources alone are not sufficient to both carry out staff's planned knowledge capture and management activities and maintain the LVHF for an appreciable portion of FY 2011 while still being able to achieve orderly facility shutdown by the end of the fiscal year. Without the reprogramming of the \$2.0 million prior-year NWF resources, the staff will be unable to complete most of the medium priority knowledge management activities.

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Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Three staff members in NMSS filed non-concurrences on this memorandum (Enclosures 2-4). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains pre-decisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. Fiscal Year 2011 Resource Estimates
for the Orderly Closure of NRC Yucca
Mountain Licensing Activities
2. Non-Concurrence dated January 18, 2011
3. Non-Concurrence dated February 1, 2011
4. Non-Concurrence dated February 2, 2011

cc: SECY

EDO

OGC

OCA

OPA

CFO

ASLBP

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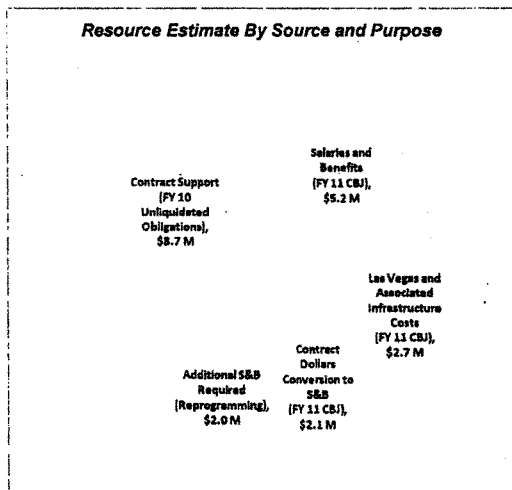
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Fiscal Year 2011 Resource Estimate for the Orderly Closure of NRC Yucca Mountain Licensing Activities

The \$20.7 million of Nuclear Waste Fund (NWF) monies in Fiscal Year (FY) 2011 is necessary for NRC's orderly closure of Yucca Mountain licensing activities. As the following table shows, \$2.7 million will be used to shut down the Las Vegas Hearing Facility along with its Digital Data Management system installation. \$18.0 million will be used for knowledge management and capture.

ACTIVITY	\$(K)
INFRASTRUCTURE	\$2,700
<ul style="list-style-type: none"> Rent and maintenance of hearing facility in Las Vegas Closure of hearing facility and removal of electronic systems 	
KNOWLEDGE MANAGEMENT AND DOCUMENTATION	\$18,000
<ul style="list-style-type: none"> Completion of technical evaluation reports Documents to be archived at National Archives; R&D samples archived Knowledge Capture - videotaping interviews, workshop presentations, documents Regulatory lessons learned OGC and other office support for closure 	
TOTAL	\$20,700

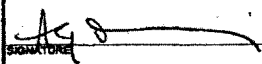
The staff will use resources available from FY 2010 unliquidated obligations (\$8.7 million), FY 2011 President's Budget (\$10.0 million), and reprogramming prior year carryover (\$2.0 million). The chart below identifies the source of funding for each purpose.



Enclosure 1

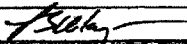
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NRC FORM 757 REVISED 10-1-00 G-20000		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103146391	
DOCUMENT SPONSOR Catherine Haney		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL Aly Molinari		PHONE NO. 301-492-3182	
<input type="checkbox"/> DOCUMENT AUTHOR <input checked="" type="checkbox"/> DOCUMENT CONTRIBUTOR <input checked="" type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Deputy Director		ORGANIZATION HLWRS/NMSS	
<p>REASONS FOR NON-CONCURRENCE</p> <p>Although the Commission Memorandum describes the current status of the program, it also addresses a path forward that seems to me to contain policy issues that require Commission direction or guidance. For example, whereas the application of Nuclear Waste Funds to FY 2011 was only authorized for orderly shutdown activities under a CR guidance and as specifically directed by the Chairman, the ongoing ASLH hearings require that these funds also support legal activities in ongoing Yucca Mountain licensing proceedings. If there are no constraints in using FY2011 or carryover NWF monies to support licensing activities, then it would be a policy issue to direct the staff to apply resources to orderly shutdown instead of completing and issuing the remaining SKR volumes, especially since the Commission has not reversed the ASLH's decision that denied DOE's motion to withdraw its application. The Memorandum also indicates that fee-based responses (rather than NWF) might be needed to shut down the Las Vegas Hearing Facility, which would be another policy issue, in my opinion.</p> <p>For the reasons above, I respectfully refuse to concur.</p>			
SIGNATURE 		<input type="checkbox"/> CONTINUED IN SECTION D DATE 1/18/2011	
ENCLOSURE TO YOUR DIRECT SUPERVISOR AND ENCLOSURE TO YOUR SUPERVISOR			
NRC FORM 757 (2-2000)		Use ADAMS Template NRC-008 PRINTED ON RECYCLED PAPER ENCLOSURE 2	

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<small>NRC FORM 757 NRC NO 15.125 (5-2009)</small>		<small>U.S. NUCLEAR REGULATORY COMMISSION</small>	
NON-CONCURRENCE PROCESS			
<small>TITLE OF DOCUMENT</small> Update on the Yucca Mountain Program		<small>ADAMS ACCESSION NO.</small> ML103146391	
<small>SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)</small>			
<small>NAME</small> Laramie E. Kozlowski		<small>PHONE NO.</small> 202-418-3158	
<small>TITLE</small> Director, Division of High-Level Waste Repository Safety		<small>ORGANIZATION</small> NRC	
<small>COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER</small> <input type="checkbox"/> I HAVE NO COMMENTS <input checked="" type="checkbox"/> I HAVE THE FOLLOWING COMMENTS See attached sheet.			
<small>SIGNATURE</small> 		<small>DATE</small> 12/1/2011	
<small>U.S. NUCLEAR REGULATORY COMMISSION</small>		<small>PRINTED ON RECYCLED PAPER</small>	

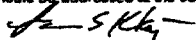
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Re: Memorandum to the Commission entitled, "Update on the Yucca Mountain Program"

Given the unique nature of the NRC's High-Level Waste Program, its associated review of the DOE Yucca Mountain license application, and its attendant internal and external issues, it seems reasonable to expect that professional staff can differ in what constitutes a policy question suitable for Commission deliberation. Mr. Aby Mohseni, Deputy Director for the Licensing and Inspection Directorate in the Division of High-Level Waste Repository Safety, suggests that there are embedded in this memorandum at least two policy matters appropriate for the Commission to consider: (1) application of Nuclear Waste Funds for orderly closure while the licensing proceeding is still ongoing; and (2) use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN). The Commission itself has not yet decided on the ASLBP CAB-4 ruling (LBP-10-11), and there is enough complexity and uncertainty to suggest that the staff seek Commission direction on these issues rather than have the staff provide, in essence, a status report. While the Commission could make this memorandum a voting matter on its own once it is received, it seems more appropriate for Agency senior leadership to acknowledge it at the outset. I believe this is Mr. Mohseni's view.

Therefore, while either way could lead to the same outcome (i.e., Commission deliberation on orderly closure and funding), I tend to agree with Mr. Mohseni that the embedded policy matters should be addressed at the outset.



Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

18 January 2011

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<small>NRC FORM 787 NRC 880 10-108 (2-2009)</small>		<small>U.S. NUCLEAR REGULATORY COMMISSION</small>	
NON-CONCURRENCE PROCESS			
<small>TITLE OF DOCUMENT</small> Update on the Yucca Mountain Program		<small>ADAMS ACCESSION NO.</small> ML163148391	
<small>SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR</small>			
<small>NAME</small> Christopher Haney		<small>PHONE NO.</small> 301-492-3554	
<small>TITLE</small> Office Director		<small>PHONE NO.</small> 301-492-3554	
<small>ORGANIZATION</small> NMSS			
<small>ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)</small> <div style="text-align: center;">- See Attached -</div>			
<small>SIGNATURE - DOCUMENT SPONSOR</small> <i>CHaney</i>		<small>DATE</small> 2-4-11	<small>SIGNATURE - DOCUMENT SIGNER</small> <i>CHaney</i>
		<small>DATE</small> 2-4-11	<input type="checkbox"/> CONTINUED IN SECTION D
<small>NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):</small>			
<input checked="" type="checkbox"/> CONCURS		<input type="checkbox"/> WANTS NCP FORM PUBLIC	
<input type="checkbox"/> NON-CONCURS		<input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC	
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			

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I carefully considered the concerns raised in Mr. Mohseni's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Prior to, and immediately after he filed the non-concurrence, Mr. Mohseni and I discussed his concerns with the memo. Since Mr. Mohseni filed his non-concurrence, the memorandum has been revised to reflect new resource information and recent discussion with the ASLBP regarding closure of the Las Vegas Hearing Facility (LVHF) and the associated infrastructure. Subsequent to this last revision, Mr. Mohseni was given the opportunity to revise his non-concurrence based on the revised memo. He chose not to revise his statement.

Mr. Mohseni believes there are at least two policy issues embedded in the memorandum:

1. Application of Nuclear Waste Funds for orderly closure instead of supporting hearing and licensing activities, including issuance of the remaining SER volumes.
2. Use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure (such as LSN).

The purpose of the memorandum to the Commission is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. The memo was not intended to raise policy issues or topics that have previously been discussed and resolved at the Commission level.

The application of Nuclear Waste Funds (NWF) for orderly closure instead of completing and issuing the remaining SER volumes has been well vetted with the Commission. I am not aware of any new information that would warrant raising it as a policy matter in this memorandum. For example, in a October 6, 2010, memorandum to Chairman Jaczko and Commissioners Svinicki, Magwood, and Apostolakis (COMWCO-10-002), Commissioner Ostendorff stated that use of FY 2011 Continuing resolution funds "is a significant policy matter that I believe warrants the Commission's attention, and which requires that the Commission give direction to the staff to avoid confusion on the Commission's intent for operation under the Continuing Resolution." He went on to propose that "...Staff continue to follow the pre-established schedule for the SER and issue the remaining SER Volumes accordingly." This matter was subsequently closed by Annette Vietti-Cook's October 14, 2010, memorandum to Commissioner Ostendorff that stated, "A majority of the Commission declined to participate on this matter. In the absence of a quorum, your proposal is not approved."

Use of funds to support continued review of the Yucca Mountain application was the topic of several Congressional letters. In an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML102980673) Chairman Jaczko responded to Congressman Sensenbrenner's concerns about reports regarding the NRC's review of DOE's Yucca Mountain application. The response to Question 1 (quoted below) also indicates that the Commission has already considered Mr. Mohseni's first issue.

"Question 1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?

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O Answer - Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month."

I am mindful that there are limited resources available to complete orderly closure activities during FY2011 while the NRC hearing activities and Federal court litigation is ongoing. As of December 28, 2010, 1.8 FTE has been expended by the ASLBP and OGC to support the ongoing ASLBP hearing and litigation in the U.S. Court of Appeals for the District of Columbia. (As a reference point, NMSS has expended 9.0 FTE.) Expenditure of FY2011 HLW funds, in this manner, has been supported by OEDO, OGC, ASLBP, and CFO, and has not been viewed to be a matter of policy although these offices and I recognize that use of the funds to support NRC hearings should be closely monitored because they could consume NWF resources that are currently needed for orderly closure in FY 2011. In addition, because there are no HLW funds in FY 2012, depletion of NWF money would bring the administrative hearing process to a halt in FY 2011.

In response to Mr. Mohseni's second concern that the memorandum contains an embedded policy issue regarding use of fee-based resources to close the Las Vegas Hearing Facility and its associated infrastructure, the memorandum has been revised to reflect several recent discussions with CFO, ASLBP, NMSS, and OGC. Originally, the memorandum stated that the Atomic Safety and Licensing Board "Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the LSN, the LVHF, and the LVHF component of the Digital Data Management System (DDMS), until the Panel receives direction from the Commission to implement the closure of that infrastructure." The memorandum previously notes that "since no Nuclear Waste Fund (NWF) resources are available in FY 2012, starting on October 1, 2011, fee-based funds will be needed to support the LVHF and its infrastructure." The revised memorandum no longer raises the issue of using fee based funds to close the Las Vegas Hearing Facility or other YM hearing infrastructure. This change was made to clearly inform the Commission that orderly closure would be accomplished this fiscal year with available NWF money. Therefore, Mr. Mohseni's second issue is no longer raised by the memorandum.

Catherine X. King
2-3-11

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NRC FORM 757 4002 AND 10.100 (2-2008)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103140391	
DOCUMENT SPONSOR Catherine Hancy		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL Janet P. Kotra		PHONE NO. 301-492-3190	
<input checked="" type="checkbox"/> DOCUMENT AUTHOR <input type="checkbox"/> DOCUMENT CONTRIBUTOR <input type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Senior Project Manager		ORGANIZATION NMSS/NMSS/PMSS	
REASONS FOR NON-CONCURRENCE <p>I have prepared and revised copious variations of this memorandum. When, on June 14, 2010, the Chairman ordered the Director of NMSS to postpone issuance of Safety Evaluation Report Volumes 1 and 3, HLW/SIS and NMSS managers became concerned the entire Commission may not be fully aware of the policy, legal and budgetary consequences of such redirection. Some believed that a diligent staff, struggling to honor conflicting obligations, needed programmatic and policy guidance from the entire Commission armed with a fair assessment of the facts. I was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed. Later, in September, it became clear that, rather than postpone issuance of individual SER volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman, through OEDO and the CFO, told staff that all work on the SER must stop, including Volume 3 on post closure safety, which was already complete, and undergoing management review. Written guidance to this effect appeared later, in an October 4, 2010 memorandum. The Chairman later met with the Yucca Mountain Team on October 12, 2010. He explained that the decision to shut down the staff's review of the application was his alone and that staff should move to orderly closure of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and the Commission has yet to issue a decision on whether DOE may legally withdraw the application. Over time, repeated rounds of comment (formal and otherwise) from OEDO, the CFO and the General Counsel were incorporated. Time and again their comments diluted or contradicted the direct language offered by NMSS and ASLSP staff. Both staff sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down a complex and valuable national program and infrastructure while still supporting an ongoing hearing process. This new long-suffering memorandum is characterized as a "status report." Throughout its tortured evolution, I continued to make countless changes during a most unorthodox process, despite growing reservations, so long as the description of the program's history and status remained reasonably accurate. At this juncture, I can no longer support this memorandum. I believe</p>			
<input checked="" type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE <i>Janet P. Kotra</i>		DATE 2/1/2011	

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ENCLOSURE 3

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NRC FORM 757 (REVISED 10-199) (2-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML163140391	
SECTION D: CONTINUATION PAGE			
CONTINUATION OF SECTION		<input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C	
<p>that, in its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for that application. It has been my experience that members of the NMSS staff, who have conducted a fair, independent and technically sound safety review, and who worked earnestly to prepare the required Safety Evaluation Report, stood down from that duty only with enormous reluctance. As currently drafted, this memorandum makes no reference to the facts surrounding the Chairman's termination of the NRC staff's review of the Yucca Mountain License application. Absent this crucial context, a reader is left with the mistaken impression that this termination and the "orderly shutdowns" of the NRC staff's licensing review and hearing process was staff's preferred and well-considered course of action, initiated by the NRC's technical staff. Nothing could be further from the truth. Furthermore, absent proper context, the reader would also conclude that NMSS staff prepared this memorandum to inform a passive Commission about "staff's" course of action, after the fact, to alert the heretofore uninvolved Commission about problems and difficulties to which "staff's" course have led. For these reasons, I must respectfully withdraw my concurrence of December 2, 2010.</p>			

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NRC FORM 757 NRC MD 10.100 (3-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103140391	
SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)			
NAME <i>King Stablein</i>			
TITLE <i>Chief, Projects Branch 8, Division of High-Level Repository Safety</i>		PHONE NO. 301-492-3199	
ORGANIZATION <i>NMSS</i>			
COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER <input type="checkbox"/> I HAVE NO COMMENTS <input checked="" type="checkbox"/> I HAVE THE FOLLOWING COMMENTS <i>I agree wholeheartedly with Dr. Kotra's comments and agree specifically that this status report lacks the necessary context and information to adequately characterize the confusion, chaos, and anguish occasioned by the Chairman's unilateral decision to disrupt the orderly process of SER development. My nonconcurrency comments will amplify some of the points made by Dr. Kotra.</i>			
SIGNATURE <i>Kevin Stablein</i>		<input type="checkbox"/> CONTINUED IN SECTION D DATE <i>2/2/11</i>	

NRC FORM 757 (3-2009)

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NRC FORM 757 NRC MD 10.158 (3-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103140391	
SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR			
NAME Catherine Haney			
TITLE Office Director		PHONE NO. 301-492-3554	
ORGANIZATION NMSS			
ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.) <p style="text-align: center;">- see attached -</p>			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>		DATE 2-4-11	
SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>		DATE 2-4-11	
NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):			
<input type="checkbox"/> CONCURS		<input type="checkbox"/> WANTS NCP FORM PUBLIC	
<input checked="" type="checkbox"/> NON-CONCURS		<input checked="" type="checkbox"/> WANTS NCP FORM NON-PUBLIC	
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			

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I carefully considered the concerns raised in Dr. Kotra's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." Over the last several months, I have met with Dr. Kotra to discuss her concerns on transitioning the Yucca Mountain Program towards closure. Most recently, I met with Dr. Kotra on January 31, 2011, to discuss the concerns she planned to raise with the most recent version of the memorandum. Based on these discussions and my review of her non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Kotra notes in her opening statement that she has "prepared and revised copious variation of this memorandum". She also states that "over time, the memo has been revised to dilute or contradict "the direct language offered by NMSS and ASLBP staffs. Both staffs sought to outline policy, programmatic and budgetary difficulties faced by their offices as they tried to cover the costs of both shutting down and complex and valuable national program and infrastructure while still supporting an ongoing hearing process." Dr. Kotra states that "In its present form, this memorandum appears to imply that the NMSS staff voluntarily, or, worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. . . . As currently drafted this memorandum makes no reference to the facts surrounding the chairman's termination of the NRC staff's review of the Yucca Mountain license application."

Dr. Kotra is correct in her statement that there have been many iterations of this memorandum. This was due to the evolving nature of the program and the information that I felt needed to be conveyed to the Commission. Dr. Kotra states that she "was given to understand the memorandum was not to refer to any of the related policy issues, a decision with which I disagreed." Over time, the purpose of the paper evolved. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities. Potential policy issues associated with the closure of the Yucca Mountain project had been decided at the Commission level (reference my response to Mr. Mohseni's non concurrence on this same memo). I am not aware of any new information regarding program closure that would warrant raising it as a policy matter in this memorandum nor did I believe it necessary to raise any facts surrounding the termination of staff's review in this status paper. I also disagree with her suggestion that the paper fails to outline programmatic and budgetary difficulties. The resources section of the memorandum informs the Commission of programmatic implications due to the limited NWF resources, noting that estimates are contingent upon "no additional activities regarding closure or adjudication" and that FY2011 resources are not sufficient for knowledge capture and LVHF maintenance activities. Lastly, I do not agree with Dr. Kotra's statement that the "memorandum appears to imply that the NMSS staff voluntarily, or worse still, on its own volition, sought to terminate NRC staff's independent review of the Yucca Mountain License application and end staff's support for a full and impartial hearing process for the application. The memorandum was not intended to document or revisit past decisions on the Project.

Catherine Haney
2-3-11

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NRC FORM 757 NRC MD 18.130 (2-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL			
TITLE OF DOCUMENT UPDATE ON THE YUCCA MOUNTAIN PROGRAM		ADAMS ACCESSION NO. ML103140391	
DOCUMENT SPONSOR Catherine Haney		SPONSOR PHONE NO. 301-492-3554	
NAME OF NON-CONCURRING INDIVIDUAL King Stables		PHONE NO. 301-492-3199	
<input type="checkbox"/> DOCUMENT AUTHOR <input type="checkbox"/> DOCUMENT CONTRIBUTOR <input type="checkbox"/> DOCUMENT REVIEWER <input checked="" type="checkbox"/> ON CONCURRENCE			
TITLE Branch Chief		ORGANIZATION NMSS/BLWRS	
REASONS FOR NON-CONCURRENCE Please see attached document.			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE <i>King Stables</i>		DATE 2/2/11	

NRC FORM 757 (2-2009) Use ADAMS Template NRC-008 ENCLOSURE 4

Not For Public Disclosure**Reasons for King Stablein's Nonconcurrence on Memorandum to the Commission entitled
"Update on the Yucca Mountain Project"**

As Dr. Kotra's direct supervisor, I have witnessed her efforts to prepare and revise this memorandum over the past few months, and we have engaged in continual discussions about whether or not we could support the contents as they twisted and turned to accommodate the many agendas that were influencing the direction of the memo. We grew more and more uncomfortable as we came to understand that neither the context for the current state of the Yucca Mountain program nor the policy issues affecting the program were intended to be part of the final product. I have come to conclude that the memo does not provide the Commission with important information regarding the program, but rather, appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011. In her non-concurrence, Dr. Kotra has skillfully illuminated many fundamental issues with the memo, and I fully support what she has written. In addition, I want to add some thoughts of my own.

Until the Chairman unilaterally brought development of the SER to a halt as of September 30, 2010, the High-Level Waste Repository Safety (HLWRS) staff was on track to deliver all five volumes of the SER in the first part of FY 2011. Volume 3, the key postclosure volume, was virtually complete and could have been issued by the November 2010 date that staff had given to ASLB. When the Chairman met with the HLWRS staff on October 12, 2010, it was pointed out to him that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear during this meeting that, although he recognized that he could choose that path, his view was that it would look more political to publish the SER volumes with findings than to issue them as Technical Evaluation Reports (TERs). Despite his audience's incredulity regarding this position, the Chairman said that the decision was solely his and that he chose to derail the SER development process while directing the staff to begin orderly shutdown of the Yucca Mountain program.

This decision has had profound effects on the Yucca Mountain program, none of which are reflected in the subject status report. As a supervisor in this program, I am keenly aware of the agony experienced by the HLWRS staff as they dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To not be allowed to finish the SER, the culmination of those years of precicensing and licensing activity, because of what appears to be the arbitrary decision of one person, was wrenching for the staff. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a program that has existed for 30 years. It felt to the staff as if the Chairman had casually dismissed the staff's sacrifices and effort of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled. The staff would

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have greatly appreciated, given the importance of this decision, an opportunity to share its views with the entire Commission. There is no recognition in this status update of the staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made.


There is also no recognition in this memorandum of the difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application. The staff has been caught in a bind which it felt itself incapable of escaping as it attempts to follow the Chairman's direction to carry out orderly closure of the program. Confronted with the reality that there is still an active application before ASLB, certain activities in the staff's Orderly Closure Plan were considered by staff to require that the Commission allow DOE to withdraw its application before staff could carry out those activities. One example is the disposition in the National Archives of the documents that have been needed during the licensing process. The staff, many of whom have been in this program for 20 years or more, are acutely aware of the NWPA and the argument that ASLB crafted in rejecting DOE's request to withdraw its application. Staff should not be put in a situation where the direction from the Chairman appears to be in direct conflict with the NWPA and the fact of an active license application. Absent policy decisions from the Commission, staff has struggled on a daily basis to figure out how to cope with this bizarre situation in a manner which would enable staff to maintain its integrity.

For these reasons, as well as those expressed so eloquently by Dr. Kotra in her nonconcurrency, I respectfully decline to concur on this status update memo.

King Stablein 2/3/11

King Stablein, Chief
Projects Management Branch B
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards

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NRC FORM 757 NRC 100 10.158 (9-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT		ADAMS ACCESSION NO.	
SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)			
NAME Aby Mohseni		PHONE NO. 301-492-3181	
TITLE Deputy Director		ORGANIZATION NRC/NMSS/DHLWRS	
COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER <input type="checkbox"/> I HAVE NO COMMENTS <input checked="" type="checkbox"/> I HAVE THE FOLLOWING COMMENTS <p>As Dr. King Stabile's supervisor, I agree with his characterization of the program and the shortcomings of the memorandum. I would furthermore point to the inconsistency of the NRC Solicitor's characterization of the status of the program as being suspended due to the Continuing Resolution, implying a temporary and reversible status. In an email to a staff inquiry, the Solicitor agreed with the following characterization:</p> <p>"In December 2010, the U.S. Court of Appeals lifted a prior order that had held four lawsuits against DOE in abeyance. The Court's December order set the lawsuits for full briefing and for oral argument. All briefs now have been filed, and the Court is scheduled to hear oral argument on March 22, 2011. The lawsuits again at DOE claim that DOE has no authority to withdraw the Yucca Mountain license application, and that Congress must specifically authorize such action. As the appeals court proceeding has moved forward, and in view of NRC's limited budget resources under the current Continuing Resolution, NRC has suspended review of the Yucca Mountain license application, and NRC has stated it has no schedule for completion of the review."</p> <p>This statement is inconsistent with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas Hearing Facility in FY 2011.</p>			
SIGNATURE 		<input type="checkbox"/> CONTINUED IN SECTION D DATE 2/3/2011	
SUBMIT THIS PAGE TO DOCUMENT SPONSOR			

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NRC FORM 757 <small>NRC MD 10.158 (3-2009)</small>		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT Update on the Yucca Mountain Program		ADAMS ACCESSION NO. ML103140391	
SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR			
NAME Catherine Haney			
TITLE Office Director		PHONE NO. 301-492-3554	
ORGANIZATION NMSS			
ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.) <div style="text-align: center;">- see attached -</div>			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE - DOCUMENT SPONSOR <i>Catherine Haney</i>		SIGNATURE - DOCUMENT SIGNER <i>Catherine Haney</i>	
DATE 2-4-11		DATE 2-4-11	
NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):			
<input type="checkbox"/> CONCURS		<input type="checkbox"/> WANTS NCP FORM PUBLIC	
<input checked="" type="checkbox"/> NON-CONCURS		<input type="checkbox"/> WANTS NCP FORM NON-PUBLIC	
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			

Not For Public Disclosure

I carefully considered the concerns raised in Dr. Stablein's non-concurrence on the memo titled, "Update on the Yucca Mountain Program." On February 2, 2011, prior to him filing the non-concurrence, I met with Dr. Stablein to discuss his concerns with the memorandum. Based on this discussion and my review of his non concurrence, I do not believe that changes are needed to the memorandum.

Dr. Stablein notes several items that are omitted from or not recognized in the memorandum. They are as follow:

- Important information regarding the program
- The "profound effects" of the decision to transition the Yucca Mountain Program to closure are reflected in the subject status report.
- "...staff's frustration over the direction of the program or of the staff's lack of opportunity to present its views, concerns, and insights to the Commission before a final decision was made."
- "...difficulties staff has had to endure because of the lack of a Commission decision regarding whether or not DOE can withdraw its license application.

Dr. Stablein further states that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011."

Mr. Mohseni, Dr. Stablein's supervisor, in his comments on Dr. Stablein's non concurrence states that he agrees with Dr. Stablein's characterization of the program and the shortcomings of the memorandum. In addition, Mr. Mohseni identifies perceived inconsistency with the orderly closure activities outlined in the memorandum, including the termination of the Las Vegas hearing Facility in FY 2011 and comments by the NRC Solicitor on a draft IAEA document that imply a temporary and reversible status (reference Mr. Mohseni's comments on Dr. Stablein's non concurrence).

I have reviewed the list of items that Dr. Stablein believes were omitted from or not recognized in the memorandum and his statement that the paper "appears to suggest that the staff has taken the initiative to go in the direction of closure of the program and has had no difficulty in carrying out certain steps to achieve closure by September 30, 2011." I believe that they all fall outside of the scope of the memorandum or are not needed. The purpose of the Commission memorandum is to describe the status of the Yucca Mountain Program and staff's plans to capture the knowledge it acquired during pre-licensing preparation and licensing review activities.

I have also been informed by the NRC Solicitor that his comments on an interim draft of an IAEA document were not meant to suggest a temporary "suspension" of YM due to budget constraints. The term was drafted by others and his focus was on accurately characterizing the status of Federal court litigation. He understands that the staff is engaged in orderly closure activities. As directed, our FY 2011 activities are focused on the orderly closure of the Program and not on completion of the Safety Evaluation Reports. As stated by the Chairman in

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an October 27, 2010, letter to the Honorable Jim Sensenbrenner (ML 102980673), "the approach the NRC is following is consistent with the terms and the Continuing Resolution, the Commission's Fiscal 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice." The approach described in the memorandum is endorsed by the OEDO, CFO, and OGC and the memorandum describes the resource limitations on completing activities in FY2011.

Catherine Haney
2-3-11

Not For Public Disclosure

Bielecki, Jessica

From: Mohseni, Aby
Sent: Thursday, March 17, 2011 3:25 PM
To: Young, Mitzi
Cc: BowdenBerry, Elva; Lenehan, Daniel; Bielecki, Jessica; Itzkowitz, Marvin; Kokajko, Lawrence
Subject: RE: Reversible SER 3

Mitzi and team,
Thank you all for your support. We appreciate your team's efforts to respond to a whole host of demands and keeping your customers satisfied.

Perhaps someday we can look back and find this period rewarding as difficult as it is for all of us.

Thank you.
Aby

-----Original Message-----

From: Young, Mitzi
Sent: Wednesday, March 16, 2011 7:18 PM
To: Mohseni, Aby
Cc: BowdenBerry, Elva; Lenehan, Daniel; Bielecki, Jessica; Itzkowitz, Marvin
Subject: Reversible SER 3

OGC has completed its review and has NLO to ch 12 with noted revisions.

This completes OGC's review of the individual chptrs that comprise this doc. We have not seen the compiled doc as was done for vol 1, but have NLO provided that it only includes publicly available references if the doc were published.

Sent from an NRC Blackberry
Mitzi Young
202-577-7475

NOT FOR PUBLIC DISCLOSURE

From: Mohseni, Aby
Sent: Tuesday, June 07, 2011 6:21 PM
To: Haney, Catherine
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: RE: TER Volume 3

Cathy,

I respectfully disagree with your June 6, 2011, decision not to approve the Technical Evaluation Report (TER) Postclosure Volume, as written, for publication and public distribution. I also disagree with the need to revise the TER. Therefore, I request your reconsideration and permission to publish the TER as soon as possible. Failing that, I request that the matter be referred to the Commission.

The basis for my disagreement and request that the issue be referred to the Commission is as follows:

- 1) You refer to the TER as draft. It is not draft; it is final and it was completed on or around March 31, 2011. It has gone through the process for signature by me as the acting Director of HLWRS in accordance with current practice. In addition, we received a "no legal objection" from OGC. It was then presented to you as a matter of courtesy because of the sensitivities surrounding activities associated with Yucca Mountain. You asked us to delay publication until you had discussed with your executive management.
- 2) As you stated in your March 6, 2011 affidavit, we developed the document based on the technical insights gained in the development of draft SER Volume 3 and associated documents. We removed references to the regulations and worked closely with OGC to reference the Yucca Mountain Review Plan (YMRP) appropriately and to ensure adherence to our agency requirements.
- 3) Your affidavit is related to an SER, an official NRC licensing document. The TER is a knowledge management document and contains multiple disclaimers that, according to OGC, could not be confused with an SER and could not be relied upon for licensing.
- 4) The TER reflects the knowledge acquired in preparation for and during the review of the Yucca Mountain License Application, using a risk informed, performance based approach. To that end, the reference to YMRP was viewed by the technical staff and by OGC as an integral part of the scope of the technical evaluation.
- 5) Lawrence, Jack Davis and I were present in your office on April 4, 2011, when Mike Weber called you to convey concerns about the references to YMRP in the TER. You indicated to Mike that consistent with the direction provided, we had developed a knowledge management document, and that you would not feel comfortable trying to change the technical content of a staff knowledge management document. To give you assurance that Mike's concerns were adequately addressed, we called Marv Itzkowitz (OGC) in your presence, and he confirmed that Mike's concerns were not shared by OGC. Nonetheless, we developed an additional section called "Note to Reader" which further highlighted the distinction between an SER and a TER to allay the concerns

- 2 -

conveyed by Mike. You indicated that when you asked for Mike's views on the Note, he said that you needed to talk to the Chairman.

- 6) I believe the availability of the TER to the public is beneficial from a scientific, technical assessment and evaluation standpoint and should be made publicly available immediately. It will also enhance NRC's credibility with respect to openness and transparency. Interested stakeholders include the Congress, Blue Ribbon Commission, EPA, DOE, industry, as well as our international counterparts.
- 7) Your third point about adding a disclaimer to the executive summary is reasonable. While there are disclaimers already, there is no harm in adding another one.
- 8) Since you make reference to the draft SER Volume 3, it should be stated for the record that it is complete in content, with OGC's "no legal objection" and no open issues, and available for issuance upon your signature and accompanying minor formatting and logistical preparation.
- 9) As you know, there are several ongoing investigations regarding NRC's activities and decision-making regarding Yucca Mountain licensing and closure. To avoid another potential issue concerning the integrity of the process, I request that you either provide your permission to issue the TER or take the matter of issuance of the TER to the full Commission for their direction.

In reaching this decision, I have conferred with the available Branch Chiefs and Deputy Director. Thank you for the opportunity to consider my response.

Aby

From: Haney, Catherine
Sent: Monday, June 06, 2011 4:13 PM
To: Mohseni, Aby
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: TER Volume 3

Aby,

I have reviewed certain sections of the staff's draft "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain License Application; Postclosure Volume: Repository Safety After Permanent Closure" (TER Postclosure Volume) and do not approve the document, as written, for publication and public distribution unless the draft document is revised.

1. Consistent with our original intent to make the TER a public document and a desire to be consistent with statements made by the Chairman that the document would not contain

- 3 -

any "findings," any references to a finding or conclusion against the YMRP need to be removed. In its current form, the draft Postclosure SER (Volume 3) and the TER Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be re-focused consistent with the TER's objective.

2. The note to reader is no longer needed with the changes noted under #1.
3. The following text be included in the executive summary – "No licensing decision regarding a construction authorization for Yucca Mountain can be made until the NRC staff finishes its technical review and the preparation of the SER, the NRC's Construction Authorization Board adjudicate contentions admitted in the licensing proceeding, and the Commission concludes its supervisory review of contested and uncontested issues."

Jathy

MEMORANDUM TO: Chairman Jaczko
 Commissioner Svinicki
 Commissioner Apostolakis
 Commissioner Magwood
 Commissioner Ostendorff

FROM: Aby Mohseni, Acting Director
 Division of High Level Waste Repository Safety
 Office of Nuclear Materials Safety and Safeguards

SUBJECT: REQUEST FOR COMMISSION INTERVENTION

June 20, 2011

The purpose of this memorandum is to describe the environment in which the Division of High Level Waste Repository Safety (HLWRS) is working and to request Commission intervention. As you know, and as the recent report issued by Office of the Inspector General (OIG) has revealed, Yucca Mountain activities in the agency and within HLWRS have been the center of much attention. The information suppression and manipulation at the Commission level, as described in the OIG report, permeate the activities of this Division and adversely impact the NRC as an independent licensing organization. However, the OIG report fails to capture the scale of the threat posed by political influence over our staff and our mission.

From my vantage point, the NRC senior leadership contributes to the problem by suppressing information that needs to reach the full Commission as statutorily required. In my view, it is not acceptable for senior managers to use "The Chairman's office made me do it" as an excuse for not keeping the Commission fully and currently informed. It is also unacceptable for senior managers to further propagate the manipulation and suppression of information down to the Division and staff level.

While the OIG documented misleading information and intimidation, it did not document the complementary issue, which has been a pattern of rewarding senior managers for supporting and contributing to politicized decisions. In this Division alone, I have witnessed the suppression and manipulation of programmatic and budgetary information to meet a politicized agenda, depriving the full Commission of the broad range of information, including programmatic options, needed by the Commission to fully discharge its responsibilities.

I ask the Commission to intervene to redirect this Agency to perform its mission instead of advancing political agendas.

Recommendations for Intervention

- 1) Provide immediate oversight of Yucca Mountain activities by performing the following:
 - a. Determine the appropriateness of issuing the Postclosure Technical Evaluation Report (see enclosure).

- b. Authorize the use of prior year Nuclear Waste Fund carryover (about \$6M and 3-4 FTEs) in FY 2012 to complete, in a timely manner, the remaining orderly closure activities and depriving some senior managers to run out the clock. That is, of course, if the full Commission agrees to close down the program.
 - c. Direct the staff to brief the Commissioners or the Commissioners' Technical Assistants periodically on the status of our activities, with the exception of legal proceedings.
- 2) Create a new position and appoint a senior manager to ensure that the Commission is fully and currently informed on all matters that the staff believes have a policy implication. This trusted and respected senior manager should not report to any of the current Offices that report to the Chairman alone. This senior manager could also serve as the Agency ombudsman with the requisite level of objectivity, erring on the side of informing the full Commission.

It is unfortunate that it has come to this. I reach out to you because of the current unhealthy environment and the sense of vulnerability that is being felt by some of the senior managers. While colleagues caution me of potential retribution in this chilled environment, I find myself in a difficult position as the last barrier to a total failure of the organization, and I have no choice but to bring this information and request to the Commission.

Enclosure:
As stated

CC: Bill Borchardt
Mike Weber
Cathy Haney
Lawrence Kokajko
SECY

ENCLOSURE

MEMORANDUM TO: The Commission

FROM: Aby Mohseni, Acting Director
Division of High Level Waste Repository Safety
Office of Nuclear Materials Safety and Safeguards

SUBJECT: REQUEST PUBLIC RELEASE OF THE TECHNICAL
EVALUATION REPORT – POSTCLOSURE VOLUME

The purpose of this memorandum is to fully and currently inform you of the direction that my Division has received on June 6, 2011, with respect to issuance of the Technical Evaluation Report (TER) on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Postclosure Volume: Repository Safety After Permanent Closure.

On June 6, I was informed that additional redactions would be needed to release the TER. I respectfully disagreed with the decision not to release the TER, as written and approved, for publication and public distribution. I also disagreed with the need to revise the TER. Attached is my e-mail fully explaining my basis for challenging this policy decision.

As the final signature authority, I signed the completed Postclosure TER on or about March 31st, in accordance with our process, and OGC has provided their "no legal objection." The TER is part of knowledge capture activities that NRC staff has developed to document their review of technical information supplied by DOE. It does not contain regulatory compliance findings, license conditions or commitments. Issuance of this report represents a concerted effort to manage and preserve the scientific and engineering knowledge and experience gained by the staff in the more than 30 years spent preparing for, and conducting its review.

I believe the availability of the TER to the public is beneficial, as it will enhance NRC's credibility with respect to openness and transparency. Barring or delaying the release of this technical assessment amounts to further suppression of information and its timely use by interested stakeholders include the Congress, Blue Ribbon Commission, EPA, DOE, industry, and our international counterparts. Its release has already been delayed over two months. It should be made publicly available immediately.

I have attempted unsuccessfully to resolve this policy matter at the staff level, by meeting with Cathy Haney on June 7th, Mike Weber on June 13th, Bill Borchardt on June 14th, and subsequently with Cathy Haney, Mike Weber, and Bill Borchardt on June 17th. Today, Mike Weber offered a path forward which would entail 'some fairly modest revisions to the abstract, executive summary, and conclusions'. He further indicated that Cathy would provide those changes. Cathy plans to discuss those points to me tomorrow, June 21. Since the changes would affect staff conclusions, I am not hopeful this path will reach a constructive conclusion. Therefore, I request the Commission's permission to publish the TER as soon as possible.

From: Mohseni, Aby
Sent: Tuesday, June 07, 2011 6:21 PM
To: Haney, Catherine
Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
Subject: RE: TER Volume 3

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Aby

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Cc: Itzkowitz, Marvin; Young, Mitzi; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill
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1. Consistent with our original intent to make the TER a public document and a desire to be consistent with statements made by the Chairman that the document would not contain any "findings," any references to a finding or conclusion against the YMRP need to be

removed. In its current form, the draft Postclosure **SER** (Volume 3) and the **TER** Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be refocused consistent with the TER's objective.

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Cathy